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Vol. III

TRANSCRIPT OF RECORD

(Pages 979 to 1034)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 14

LLOYD C. DUNCAN, PETITIONER,

vs.

DUKE PAOA KAHANAMOKU, SHERIFF OF THE CITY AND COUNTY OF HONOLULU

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

TRANSCRIPT OF RECORD
IN FOUR VOLUMES

Office - Supreme Court, U. S.
FILED
DEC 29 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1944

No. 791

LLOYD C. DUNCAN,

Petitioner,

vs.

DUKE PAOA KAHANAMOKU, Sheriff, City and County of Honolulu,

Respondent.

VOLUME III

Pages 979 to 1184

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 55 Eleventh Street, San Francisco

No. 10763

United States

Circuit Court of Appeals

For the Ninth Circuit.

DUKE PAOA KAHANAMOKU, Sheriff of the City and County of Honolulu,

Appellant,

vs.

LLOYD C. DUNCAN,

Appellee.

Transcript of Record

In Three Volumes

VOLUME III

Pages 979 to 1184

Upon Appeal from the District Court of the United States for the Territory of Hawaii

Rotary Colorprint, 590 Folsom St., San Francisco

ROBERT K. MURAKAMI,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your name and present occupation?

A. Robert K. Murakami, Attorney at Law.

Q. When were you admitted to the bar?

A. In 1926.

Q. Where did you study law?

A. University of Chicago Law School.

Q. When did you receive your degree from the University of Chicago?

A. In the summer of 1925.

Q. Where were you admitted to the bar? [624]

A. In the Territory of Hawaii.

Q. Have you practiced law here since that time?

A. Yes, I have.

Q. In the course of your practice have you been consulted by persons of Japanese ancestry in the Territory concerning their possible citizenship under Japanese law? A. I have.

Q. In what respect has your practice in that field been? Explain it to the Court.

A. Particularly in reference to expatriation of their Japanese nationality.

Q. Persons of Japanese ancestry would come to you as their lawyer to handle their applications for expatriation from Japanese citizenship, is that so? A. That is true.

(Testimony of Robert K. Murakami.)

Q. Have you, in the course of your practice, had occasion to examine the Japanese law of citizenship? A. Yes, I have.

Q. Have you had occasion to study the Japanese law on citizenship of persons of Japanese ancestry born outside of the Empire of Japan?

A. That particularly.

Q. Have you prepared translations of the provisions of the Japanese nationality law bearing on the question of the Japanese citizenship of persons of Japanese ancestry born outside the Empire of Japan? [625] A. Yes, I have.

Q. And have you those English translations with you? A. I have.

Q. And have you the Japanese text of those laws with you?

A. Yes, I have a text.

Q. Will you explain to the Court what the Japanese law is in respect of a person of Japanese ancestry born in the Territory of Hawaii, and explain any changes that have been made in the Japanese law? A. A person——

Mr. Anthony: May I ask this witness a few questions to find out whether or not he is qualified to give this evidence?

The Court: Yes.

By Mr. Anthony:

Q. Mr. Murakami, have you ever studied Japanese law?

A. Only in the sense as a practictioner here in the Territory and getting some correspondence,

(Testimony of Robert K. Murakami.)

reading correspondence courses and reading commentaries of Japanese law, and getting whatever information available here and in the Consulate and elsewhere.

Q. You never studied in any Japanese Law School? A. No, I did not.

Q. Have you ever studied in Japan at all?

A. No.

Q. Ever been there?

A. Just for a trip, a short trip. [626]

Q. Will you tell the Court frankly whether or not you hold yourself out as an expert in Japanese law?

Mr. Ennis: I object, your Honor, on the grounds that the witness is being asked to testify about one aspect of Japanese law, not Japanese law generally.

Mr. Anthony: Well, I don't understand that an expert in foreign law can come in and say that I just know the law relating to notary public.

Mr. Ennis: On the contrary, the law is that an expert is usually qualified in one aspect of the law. I doubt that Mr. Anthony would claim that he was an expert in the patent laws of the United States.

Mr. Anthony: I don't claim to be an expert on anything. Well, I'll reframe my question, your Honor.

Q. Do you think that you are an expert on the Japanese law relating to citizenship, nationality, expatriation and those kindred subjects?

Mr. Ennis: I object on the grounds, your Honor,

(Testimony of Robert K. Murakami.)

that he is calling for a determination which your Honor should make. I think the witness is perfectly willing to state what his person is and what his knowledge of Japanese law is. He should not be asked as to conclusions whether he considers himself as an expert.

Mr. Anthony: I'm asking him if he is qualified and to tell the Court.

The Court: You asked him whether he considered himself an expert. [627]

Mr. Anthony: Well, I'll change that. I'll reframe the question. Mr. Murakami, do you think you are qualified in Japanese law to tell this Court what the Japanese law was relative to nationality, citizenship, expatriation and kindred subjects?

The Witness: I wouldn't go about kindred subjects, but I could go only to this extent that I think I can tell the Court just exactly what the situation is and what the requirements are and how it is done, etc., as to the expatriation of citizens of dual nationality from the Japanese nationality.

Mr. Anthony: Have you ever read a decision by a Japanese court?

The Witness: I have read decisions of the Japanese courts.

Mr. Anthony: Relating to nationality?

The Witness: No, not on nationality.

Mr. Anthony: Are there such things as decisions relating to citizenship and nationality under the judicial system of Japan?

(Testimony of Robert K. Murakami.)

The Witness: I should imagine so, but I don't know.

Mr. Anthony: You have never read one?

The Witness: No.

Mr. Anthony: I object to the witness testifying your Honor.

Mr. Ennis: Now, let's pursue this question of qualifications a little further.

By Mr. Ennis:

Q. Have you read the statutory provisions of the Japanese law about nationality? [628]

A. Yes, I have.

Q. Have you read Japanese treatises about the law of citizenship? A. I have.

Mr. Ennis: Now, if the Court please, questions such as the opposing Counsel has addressed to the witness may go to the weight which is to be given to the witness' testimony. But they do no go to the absolute disqualifications.

The Court: I think that is so. Apparently there is nothing before the Court on the subject. You didn't make any objection to Mr. Anthony's questions? Oh, yes. Now, the last thing was that Mr. Anthony objected to this witness testifying further on the subject.

Mr. Anthony: On the gronud that he has not shown himself to be qualified, your Honor.

The Court: Overruled.

Mr. Anthony: With all due respect to Mr. Murakami as a lawyer learned in our law.

The Court: Overruled. (To witness): Have

(Testimony of Robert K. Murakami.)

you made any study of the same subject along the same lines as to any other nation, other than Japan, any European nation, Italy, Germany, France or England?

The Witness: No, your Honor, except to the extent of reading text books concerning nationality and dual nationality, etc., written by American text writers.

The Court: Dual nationality, is it a thing that is peculiar [629] to Japanese laws or is it general in the laws of other countries or any country?

The Witness: I understand that it is not peculiar to Japan. As a matter of fact, it was taken by Japan from continental Europe.

Mr. Anthony: Japanese civil code was based upon the German civil code, was it not?

The Witness: That is so.

Mr. Anthony: That is a civil law country?

The Witness: Yes.

Mr. Anthony: The same as the Italian law, then, or German law?

The Witness: That is true.

The Court: French

The Witness: French.

The Court: You may proceed.

Mr. Ennis: I request to be marked Respondent's Exhibit No. 10 for identification these four sheets purporting to be English translations of provisions of Japanese law on nationality.

(Received and marked "Respondent's Exhibit No. 10 for identification.")

(Testimony of Robert K. Murakami.)

By Mr. Ennis:

Q. Mr. Murakami, I show you Respondent's Exhibit No. 10 for identification. Are these English translations of the provisions of the Japanese law prepared by yourself? (Showing witness several typewritten sheets of paper). [630]

A. They are.

Q. From the Japanese text?

A. From the Japanese text.

Q. Now, will you state to the Court and explain what the Japanese law is and any change that has been in the Japanese law on the Japanese citizenship of persons of Japanese ancestry born outside of the Empire of Japan, and particularly in the United States?

A. The law, the nationality law of Japan prior to 1916 was that a person that was born of a Japanese father was a Japanese, whether he was born in Japan or in the Territory of Hawaii. In 1916 there was an amendment which made it possible for a person born in a foreign country, that is, a foreign country from Japan to expatriate or give up his Japanese nationality by taking steps. But that was only limited to those between 15 and 17 I think. But the amendment which is now in effect, and the nationality law as revised now and in effect is that—it came about in 1924, the law of 1924—it made a drastic change in the nationality law of Japan in this respect, that a person born, say, in the Territory of Hawaii of a Japanese father will not be a Japanese, that is, not be a Japanese subject

(Testimony of Robert K. Murakami.)

unless within 14 days from the date of the child's birth his birth is registered with the Japanese Consulate, and at the same time there is shown that there is an indication with the report of birth that the child shall retain his Japanese nationality. If such report and such indication of intention to retain Japanese nationality were [631] not manifested and reported to the Japanese Consulate, then retroactive to the date of the child's birth this Japanese child never acquired Japanese nationality.

Q. What date was that 1924 enactment effective?

A. The act was enacted in 1924 and became effective *in* December 1, 1924. If, however, the parents reported the child's birth to the Japanese Consulate within the period of 14 days, then, of course, the child retained his dual, that is, Japanese nationality. But such child may later or the parents may later take steps to expatriate the Japanese nationality. This step, that is, this provision of the expatriation was extended also to those who were born prior to the effective date of the act, that is, those born prior to December, '24, in countries designated by the Imperial ordinance, which included the United States and five other western hemisphere countries. And so, by that revision of the nationality law, those persons of Japanese ancestry born in the Territory of Hawaii, let's say, prior to December 1, 1924, could, by making a report to the Home Ministry through the Japanese Consulate, expatriate their Japanese nationality at will, in other words, by their own volition.

(Testimony of Robert K. Murakami.)

Q. In the course of your practice, Mr. Murakami, were you familiar with and have you seen the forms of registration of births with the Japanese Consulate made out by persons in this Territory?

A. Yes, I have.

Q. And it was the practice to make them out and file them with the Japanese Consulate? [632]

A. Yes, for those parents who intended to have the Japanese nationality retained for some reason or other.

Q. Respondent's Exhibit 10 for identification, which I showed you, contains the text of these provisions of Japanese law which you have referred to in your testimony?

A. Yes, only the translation of the provisions as they now stand, that is, with the 1924 amendment.

Q. Yes.

Mr. Ennis: I offer Respondent's Exhibit 10 for identification in evidence.

The Court: Received Exhibit 10 in evidence.

(Respondent's Exhibit "No. 10" was received in evidence.)

(Testimony of Robert K. Murakami.)

RESPONDENT'S EXHIBIT No. 10

Nationality Law

(Law #66, March 16, 1899;
Amended by Law #27 of 1916;
Amended by Law #19 of 1913.)

Article 1.

A child shall be Japanese if at the time of his birth the father is a Japanese. The same is true if the father had died prior to the birth of the child but was a Japanese at the time of his death.

Article 20.

A person who shall have acquired a foreign nationality by his own wish shall lose his Japanese nationality.

Article 20, Sec. 2.

A Japanese born within a foreign country designated by Imperial Ordinance and who by virtue of birth in such country has acquired its nationality shall lose his Japanese nationality retroactive as at the time of birth unless an intention to retain Japanese nationality shall be manifested in accordance with the provisions of law. (This Article added by Law #27, 1916; amended by Law #19, 1924.)

Any person whose Japanese nationality has been retained in accordance with the provisions of the preceding section, or, any person who, by virtue of his birth prior to the designation as provided for in the next preceding section, within a designated foreign country, has acquired the nationality of such foreign country, may expatriate his Japanese na-

(Testimony of Robert K. Murakami.)

tionality on his own desire if he has such foreign nationality and has his residence within such country.

Any person who shall have expatriated in accordance with the provision of the next preceding section shall lose his Japanese nationality.

Census Registration Law

Article 69.

A birth shall be reported within 14 days.

x x x x x

Home Ministry Ordinance #26; Nov. 17, 1924
Regulations for the Enforcement of the Nationality Law.

Article 2.

If, in accordance with Sub-section 1, Section 2, Article 20 of the Nationality Law, retention of Japanese nationality is intended, the person required to report a birth pursuant to Paragraph 1 or Paragraph 2 of Article 72 of the Census Registration Law Shall report and indicate such intention together with report of birth within the time prescribed in Article 69 of the Census Registration Law.

x x x x x

Imperial Ordinance #262, Nov. 17, 1924

Pertaining to Designation of Foreign Countries under Sub-section 1, Section 2, Article 20, Nationality Law.

The following foreign countries are hereby designated in accordance with Sub-section 1, Section 2, Article 20 of the Nationality Law.

(Testimony of Robert K. Murakami.)

1. United States of America
2. Argentina
3. Brazil
4. Canada
5. Chile
6. Peru

Supplementary Rule

This Ordinance shall take effect on December 1, 1924.

[Endorsed]: Filed 4-8-44.

Mr. Ennis: That's all, Mr. Murakami. Just a minute, I think Mr. Anthony wants to ask a question.

Mr. Anthony: No, no questions.

(Witness excused.)

Mr. Ennis: I would like to say this for the record, your Honor, that without any reflection on Mr. Murakami, we would be glad to supplement his testimony and the remarks of the Chief Justice of the United States in the Hirabayashi case, which are in the same tenure as his testimony, by a professor of any Japanese law institute available. But, of course, under the war conditions that kind of testimony, which Mr. Anthony would prefer, is not available.

Mr. Anthony: Oh, yes.

Mr. Ennis: That is all the testimony the Government has at [633] this time, your Honor. If we might go on Tuesday morning at nine o'clock——

Mr. Anthony: I have a few questions that I would like to ask. I see Captain Wickhem some place and I wonder if I could ask him a few more questions about Commissioner's duties?

J. FRANK WICKHEM, Captain U. S. Army,

a witness in behalf of the Respondent, having previously been sworn, resumed and testified as follows:

Recross Examination

By Mr. Anthony:

Q. You have already been sworn, have you not, Captain? A. That's right.

Q. Do you have available a copy of the General Orders? A. I do not.

Mr. Ennis: We have a copy.

Mr. Anthony: I mean for him to use.

Col. Slattery: Here is a printed copy. (Handing Mr. Anthony a printed document) (Mr. Anthony hands same to witness)

Q. Will you please turn to General Orders No. 2 and examine that, Captain? A. Yes.

Q. Paragraph 3.01 states the jurisdiction of the Provost Court. I'd like to know, Captain, first, whether or not the Provost Court takes jurisdiction in all criminal cases involving the Armed Forces?

A. That's right, Mr. Anthony, except in those

(Testimony of J. Frank Wickhem.)

cases where [634] the Commanding General may relinquish jurisdiction.

Q. And that is?

A. That pertains to traffic cases.

Q. Just traffic cases?

A. Traffic cases, that's right.

Q. How about crimes like murder and theft?

A. Not in the Provost Court.

Q. Not in the Provost Courts?

A. That's right.

Q. That is handled in a Courts-Martial, is that correct? A. Yes.

Q. In an agreement between the Territorial Courts and the Army and Navy even before the war? A. That's right.

Q. So that your jurisdiction over military personnel only relates to traffic cases?

A. That's right, traffic cases, and also——

Q. Violations of General Orders?

A. Yes, violations of General Orders, that's right.

Q. How do you determine what a traffic case is?

A. Well, violations of the Territorial traffic statutes or the revised ordinances, the revised traffic code.

Q. How about if a guy is guilty of reckless driving, a violation of the Territorial statute, where would he be tried?

A. You are referring now to a member of the Armed Forces?

Q. Yes. [635]

(Testimony of J. Frank Wickhem.)

A. He'd be tried in a Provost Court.

Q. You call that a traffic case? A. Yes.

Q. Suppose along with that incident you have a case of criminal neglect resulting in homicide?

A. That would not be tried in a Provost Court.

Q. Where do you find that in the General Orders?

A. It is not in the General Orders; it is just a matter of interpretation.

Q. Now, in regard to the trial of civilians, what is the language in the Orders that gives the jurisdiction over to the Provost Courts for the trial of civilians?

A. The language in the General Orders is that any violation of General Orders during blackout, to try civilians for any violations of a General Order and for traffic offenses during blackout.

Q. Suppose the civilian is guilty of reckless and heedless driving during blackout?

A. He is tried in the Provost Court.

Q. Suppose along with that offense there is a resulting homicide during blackout, criminal neglect, where is he tried?

A. Well, it has never come up, Mr. Anthony, but I'd say offhand that he'd be tried in the civil courts.

Q. Is there anything in the orders that would give you any guide to that?

A. No, that's right, there isn't. [636]

Q. You've got to interpret the words "traffic offenses", is that right? A. That's right.

(Testimony of J. Frank Wickhem.)

Q. That may mean a felony and it may mean a mere misdemeanor? A. That's right.

Q. And it's your job to make that interpretation, is that right? A. I'd say, Yes.

Q. And you sort these cases out and some of them will go to your Courts and some will go to the Civil Courts? A. That's right.

Q. How about the crime of murder by a civilian during blackout? A. No.

Q. By "No" you mean that is not tried in the Provost Court?

A. That's right; it goes to Civil Courts.

Q. In other words, in order to get down in the Provost Court you've got to do one of two things, either violate a military order——

A. That's right.

Q. ——or do something in connection with traffic?

A. Or an order of a Military or Naval Commander.

Q. Yes. Those three things?

A. That's right.

Q. And whether or not you have committed any crime or offense that relates to traffic depends upon your determination? [637]

A. That's pretty generally true.

The Court: When was the Naval Commander brought in?

The Witness: In General Orders 2.

The Court: Two?

The Witness: Yes, your Honor.

(Testimony of J. Frank Wickhem.)

The Court: Well, such orders of the Naval Commander, have they been published or otherwise promulgated to public notice?

The Witness: Yes, your Honor. That would be like a speed law on the Pearl Harbor Naval Reservation. Those orders are published and also the signs are up.

By Mr. Anthony:

Q. Captain Wickhem, the General Orders, are they published?

A. They have been published, Mr. Anthony, in the papers.

Q. Is there any authority for their publication that you know of?

A. No, I don't know that.

Q. Do you know whether or not the newspapers publish these without charge?

A. No, I don't know in regard to the compensation, Mr. Anthony. I know they did appear in the papers.

Q. That's a fact, is it not, that on many occasions they appear after they have been issued?

A. I think that it is released to the press simultaneous with its enactment, when it is released it is also given to the press immediately.

Q. Are you sure about that? [638]

A. Yes, I have been told that, Mr. Anthony.

Q. How many people are in the Office of the Military Governor?

Mr. Ennis: Objection, it is irrelevant.

(Testimony of J. Frank Wickhem.)

Mr. Anthony: I don't think it is irrelevant at all. This is a new system of administration of justice in Government, and I think we ought to have some facts about it.

Mr. Ennis: If the Court please, the Office of the Military Governor has a great many duties that are not related to the Provost Court system, I think.

The Court: Sustained.

By Mr. Anthony:

Q. How many Provost Judges do you have?

A. We have four on this island, and four on the other islands; eight. And then I think there are at least one or two more, Mr. Anthony, who are qualified to sit who are not sitting.

Q. These Judges have clerks?

The Court: What do you mean by "qualified"?

The Witness: I mean they have been appointed, that's right, they have just been appointed and named.

Q. Who appoints them?

A. The Military Governor.

Q. By that you mean General Richardson?

A. That's right, by General Order.

Q. And does he pass on the qualifications of these Judges?

A. I think that they are investigated very carefully, and [639] that Colonel Morrison reports to General Richardson the man that he intends to recommend, and General Richardson in a general way knows his qualifications, but I won't say that he knew them specifically.

(Testimony of J. Frank Wickhem.)

Q. That is, the individuals are investigated by Colonel Morrison who in turn makes a report to the General?

A. That's right, and when I say Colonel Morrison, for example, I reported to Colonel Morrison about certain men, and he asked me about them, and I told him about their legal background, their duties in the Army and why I thought they'd be qualified to sit. And I'm not the only source of information; he gets information, the same information, from other sources.

Q. Prior to your appointment, was it the practice to have lawyers sitting on these Courts?

A. Yes.

Q. In a few instances?

A. Yes, Colonel Baroff was a practicing lawyer.

Q. He was a recent appointment, however, fairly recent?

A. Well, it was 1942, I think early in 1942, Mr. Anthony.

Q. Is it a fact that a large number of those Judges had no training in the law, isn't that a fair statement?

A. No, I don't think that is a fair statement. I think that most all of the Judges who have sat in the Provost Courts had a legal background, Mr. Anthony. Now, since I've been down there there are only two, as I said yesterday, who are not lawyers in civil life. [640]

Q. How about these military commissions?

A. The military commissions?

(Testimony of J. Frank Wickhem.)

Q. Yes.

A. I am not familiar with them.

Q. Like that commission that tried Saffrey Brown—were there any lawyers on that Court?

A. I'm not familiar with that commission, Mr. Anthony.

Q. When did you take over your office?

A. July, 1943.

Q. 1943? A. That's right.

Q. And you don't know anything about the qualifications of the Judges before that, do you?

A. Yes, I do, because prior to that time, when I was in the Judge Advocate's Office at Shafter, I used to come down and sit on the bench.

Q. Do you remember Purcell, who used to sit down here? A. Not since I've been here.

Q. At Shafter, Major Purcell?

A. No, I don't recall any Purcell, not in 1942 or 1943, Mr. Anthony.

Mr. Anthony: That's all.

Redirect Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state the qualifications of some present Provost Court Judge?

[641]

A. Well, Lt. Col. Newkirk is the Provost Judge sitting in Honolulu. He is a practicing lawyer, admitted to the Supreme Court or to the state bar in Illinois, to the Federal District Court, I think it is the Southern District of Illinois. He is

(Testimony of J. Frank Wickhem.)

a member of a firm of lawyers in Illinois who have an "A" rating in Martindale's. He has been, I'd say, a practicing lawyer there for about 15 years.

Lt. Col. Jones, who sits on the Island of Kauai, was just prior to his coming in to the Army—I think they referred to them as District Judges in Utah. It is the trial Court of Record. It would correspond to the Superior Court in California. He got his leave of absence from that judicial position to go into the Army. He is a man of some 48 years of age, I guess, and has been practicing law for—this is an estimate, your Honor—but I imagine some 20 years.

Frank Hustace, Captain Hustace, who sits in Hilo, is a graduate of the Harvard Law School. He has been a Deputy City and County Prosecutor in the City and County Attorney's Office of the City and County of Honolulu, and was very instrumental and helpful in formulating and compiling the present revised ordinances that are in use in this city.

Captain Rohrer is a man of about 45 years of age; just prior to coming into the Army he was a deputy in the City Attorney's Office in the City of Los Angeles and has been practicing law. He is a graduate of the law school of the University of California, has been a practicing lawyer in the City of Los Angeles since [642] about 1928.

Colonel Du Pree is a regular Army officer. He sits at Schofield, or rather I should say he sits at Pearl City. Now, his experiences, I noticed in

(Testimony of J. Frank Wickhem.)

his biography that he has acted in the Judge Advocate's Department in the Territory, was also an assistant Provost Judge in Germany during the time of the occupation. Other than that, I don't believe he has any particular legal background.

The Judge on Lanai is a civilian, Mr. Carlson. Now, he has acted in that capacity ever since the blitz. I believe that the cases on Lanai won't run over—again this is an estimate—but I'd say 20 a month.

The other Provost Judge is Lieutenant Klatt, and he sits at the Keneohe Air Station. He is a man about 48 years of age; he was admitted to practice in the State of Illinois and has practiced law in Illinois, in Peoria, Illinois, for a period of some 12 or 14 years prior to coming into the Army.

Of course, you have had an opportunity to see Judge Mundo on the stand and to get his——

Mr. Anthony: What do we have here, a general specification, your Honor? Of course, you had an opportunity, but I object to the witness——

The Witness: All right, the one——

Mr. Anthony: Just a minute. I object to the witness doing anything but answering questions.

The Witness: May I answer as to the last Provost Judge, [643] your Honor?

The Court: That's the one you are talking about—yes.

The Witness: Judge Mundo is the last one.

Mr. Ennis: We had his qualifications, yes.

(Testimony of J. Frank Wickhem.)

The Witness: Yes, I just want to refer to the fact that he was the only one I omitted.

The Court: Judge Mundo is in Honolulu?

The Witness: Lt. Col. Newkirk sits in Honolulu.

The Court: That's the one you didn't mention?

The Witness: No, I mentioned him as the first one.

By Mr. Ennis:

Q. Captain Wickhem, is it a fact that Paragraph 3.01 of General Orders 2, as it appears in this printed form which Counsel refers to, has since been amended to strike jurisdiction over civilians between the beginning of darkness, as defined in the regulation, and the beginning of blackout?

A. That's right.

Q. Will you explain that revision?

A. Traffic—after the amendment was made to paragraph 3.01, practically the only offense by civilians during the hours of darkness—that is, one half hour after sunset and prior to 10 o'clock, and from one half hour before sunrise or rather from 5:30 to one half hour before sunrise—during those hours the only traffic offenses that are left, as far as civilians are concerned are speeding and it used to be parking, and of course, parking now has been amended, and lights. Those were practically the only offenses left as far [644] as civilians are concerned.

Q. To be tried in the Provost Courts?

A. Yes, during those hours of darkness.

(Testimony of J. Frank Wicklhem.)

Mr. Anthony: There is nothing to prevent the Military Governor from getting out an order and making the crime of assault and battery triable in Provost Courts, is that right?

Mr. Ennis: I object on the ground that it is a hypothetical question.

Mr. Anthony: Precisely, they get out an order—

Mr. Ennis: I object to Counsel testifying.

Mr. Anthony: I'm not testifying; I'm stating what is in this record. Every time the Office of the Military Governor gets out an order that's automatically triable in the Provost Court, and it may cover any subject that is contained in the order. That is a fact, is it not? Any military order can enlarge the offense beyond what now exists, at any time.

Mr. Ennis: I object on the ground that it is hypothetical and argumentative and asking for a legal conclusion.

The Court: Well, the witness has given his interpretation of the Governor's orders, and I think it is a fair enough question.

The Witness: They could.

Mr. Ennis: Exception.

The Witness: They could enlarge the jurisdiction, Mr. Anthony, although there has been an agreement as to the division of powers in compliance with the proclamation of March 10, and there has always been rigid adherence to that. And I would doubt if there [645] would be any general order which would violate that division of authority.

(Testimony of J. Frank Wickhem.)

By Mr. Anthony:

Q. I believe that you said that the Territorial law in general was followed in regard to punishment?

A. There is a general order which says that the punishment shall be commensurate with the offense, and also the General Orders say that on the whole the Territorial law will be used as a guide.

Q. Guide? A. That's right.

Q. The Provost Courts are not limited to the punishment prescribed in any written law?

A. No, they are not, Mr. Anthony.

Q. Can you explain to the Court how it was that the Petitioner in this case was given hard labor?

A. How it was he was given hard labor?

Q. Yes.

A. Not in the mittimus. It says nothing about that. No, I can't explain that.

Q. That was just an error, was it?

A. Well, I won't say that. I don't know anything about the facts in that particular situation. I know of it.

Q. You are the Commissioner?

A. I know it does not prescribe hard labor.

Q. That's right. And under your system you are supposed to say in the mittimus whether or not the man is to be confined [646] at hard labor, is that a fact?

A. That's right. As a matter of fact, I in-

(Testimony of J. Frank Wickhem.)

quired about that. I didn't know that his job was changed until the testimony came out here in Court.

Q. I see. Captain Wickhem, do you fix policies in regard to punishment other than punishment prescribed by law or which may be considered punishment from which written laws are used as a guide, or such as the donation of blood or anything like that?

A. No, there has been no punishment exacted to my knowledge at any time since I have had connection with the Provost Courts.

Q. That policy was abandoned before you became Provost Judge?

Mr. Ennis: I object on the ground that there is no testimony that there was any such policy.

Q. You recall when part of the punishment used to be donation of blood here in the Territory?

A. I have heard about that.

Q. Well, you know that's a fact, don't you?

A. Purely through hearsay; not while I've been here. That happened before I was in the Army. It didn't happen while I was in the Army, in any way, shape or form.

Q. Would your records show that?

A. I don't know that.

Q. Do you keep records of the number of pints of blood or anything like that?

A. I have never seen any such records. [647]

Q. And how about bonds that were ordered to be purchased?

Mr. Ennis: Objection.

(Testimony of J. Frank Wickhem.)

Q. As a part of the sentence—do you keep records of that?

A. There has never been any sentence pronounced since I have been connected with the Provost Court like that.

Q. You are familiar with the fact that prior to your connection with the Provost Courts there have been such sentences?

A. Only through newspaper testimony and conversations that you have had here. I don't know it to be a fact.

Mr. Anthony: That's all.

By Mr. Ennis:

Q. Captain Wickham, a sentence which a Provost Judge may give is regulated and restricted by the General Orders, is not that a fact?

A. Just a maximum restriction of $5,000 and five years, and General Orders 2 makes a maximum of $200 and two months.

The Court: What does that relate to?

The Witness: To labor, your Honor, absenteeism.

Mr. Ennis: That's all, Captain. Thank you.

Mr. Anthony: Thank you.

(Witness excused.)

Mr. Ennis: That's all we have, your Honor.

The Court: Is there anything else before the Court, Mr. Clerk?

The Clerk: No, your Honor.

The Court: Counsel have nothing further that

they wish to [648] present at this time, I take it?

Mr. Ennis: No, your Honor.

The Court: The Court is adjourned as to this case until Tuesday morning, April 11th, at 9 o'clock.

(The hearing adjourned at 10:38 o'clock, a.m.) [649]

Honolulu, T. H.
April 11, 1944
9:03 o'clock, a.m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, case called for further hearing.

Mr. Ennis: May we proceed?

The Court: You may proceed.

Mr. Ennis: General Richardson, will you take the stand, please?

LT. GENERAL ROBERT C. RICHARDSON, JR.,
United States Army,

a witness in behalf of Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. General Richardson, will you state your full name and your present position?

A. Robert C. Richardson, Jr., Lt. General, United States Army, Commanding General of the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Army ground and air forces in the Central Pacific area.

Q. When did you enter the Army, General Richardson? A. In 1900, June 19, 1900.

Q. General Richardson, will you state very briefly and in chronological order, from 1900, the military positions and [650] experience that you have had?

A. After four years at the U. S. Military Academy at West Point, New York, I was assigned to the Cavalry in the Philippine Islands. I then returned to the United States and was stationed in San Francisco in command of "I" Troop of the Fourteenth Cavalry. For the next four years I was instructor at the U. S. Military Academy at West Point, followed by a tour in the Philippine Islands until 1911. I returned to Texas where I served for three years in the Cavalry on the Texas border, returning again to the U. S. Military Academy as an instructor until the outbreak of the war.

I was then Aide-de-Camp to Major General Thomas H. Barry and was with him and observed in the early part of the European War on the western front. I was subsequently detached in December, 1917, to the American General Headquarters and served in the "G-3" or operations section of GHQ.

I was in command of General Pershing's Advance General Headquarters at Lyon until the Armistice, at which time I was sent to command the City of Trier, Germany. For quite awhile I was in the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
Allied Peace Conference, returning to the United States in 1919 for a tour of the General Staff. I then returned to the Philippine Islands in 1921, where I served for two years and one-half on the General Staff of troops.

I was next detached to the Command and General Staff School at Fort Leavenworth, Kansas, followed by two years and [651] a half in Paris at the Ecolo Superieure de Guerre, or the French War College, from which I was sent as Military Attache of the American Embassy at Rome.

I then returned to Fort Riley, Kansas, for a tour of duty with the Cavalry—in which I was detached—and the U. S. Military Academy as Executive Officer; and subsequently appointed Commandant of Cadets, in which capacity I served for four years and three months. I then went to the Army War College, Washington, D. C., for a tour of duty, followed by a tour on the War Department General Staff in the Military Intelligence.

Q. What year was that?

A. 1934-35. I was then appointed Commanding Officer of the Fifth U. S. Cavalry, Fort Clark, Texas, which regiment I commanded for two years and a half. I was then appointed Brigadier General of the Line and assigned to the command of the Second Cavalry Brigade at Fort Bliss, Texas.

I was next detached to command the Cavalry School at Fort Riley, Kansas. For twenty months I served in that capacity, was appointed a Major

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
General and assigned to command the First Cavalry Division at Fort Bliss, Texas.

I was next detached in January, 1941, to organize the Bureau of Public Relations of the War Department for the Secretary of War. After six months in that capacity, I was appointed Commanding General of the Seventh Army Corps, in which capacity I served for twenty-two months.

[652]

I was then detached and sent to Hawaii and appointed Commanding General, Hawaiian Department. My title was subsequently changed to Commanding General, Central Pacific Area.

Q. General, will you describe the geographical limits of the Central Pacific Area?

A. The Central Pacific Area includes a sector of the Pacific—the responsibility of the Commander-in-Chief, Admiral Nimitz—in general terms it is a large sector of the ocean north of the equator.

Q. And what are its limist west and east?

A. It extends to the coast of California, to Japan.

Q. And is that Gentral Pacific Area designated as your command by the War Department?

A. It is.

Q. And in addition to its designation by the War Department is it also part of the command designated by the Joint Chiefs of Staff?

A. It is. It is one of the subdivisions of the Pacific Ocean areas which have been delineated by the directives of the Joint Chiefs of Staff.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. And it includes the Territory of Hawaii?

A. Yes, it does.

Q. At what time was the Central Pacific Area created?

A. On August 14, 1943. Pardon—correction. I was appointed Commanding General of the Central Pacific Area on [653] August 14, 1943. The Pacific Ocean areas were created by direction of the Joint Chiefs of Staff at some time long prior to that, when Admiral Nimitz was given his directives.

Q. Prior to setting up the command, the command of the Central Pacific Area, what was the military command, the Army command, which included the Territory of Hawaii?

A. The designation of the Army command was the Hawaiian Department.

Q. And military command in the Territory on December 7, 1941, was designated the Hawaiian Department, is that correct?

A. The Hawaiian Department, correct.

Q. Will you describe very briefly as a basis for your testimony, General, what the Territory of Hawaii is within your Central Pacific area, its geographical nature generally?

A. The Territory of Hawaii includes these islands of the Hawaiian group beginning with Kauai and ending with Hawaii; in other words, Kauai, Maui, Lanai, Molokai, and Hawaii—Oahu, of course.

Q. For the purposes of the conduct of the war, General, does this Central Pacific Area, including

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

the Hawaiian Islands, possess and has it been given any military designation other than the Central Pacific Area? I mean, has it any other designation in military parlance in terms of carrying on war activity here? [654]

A. Yes, this whole area under the command of the Commander-in-Chief of the Pacific Ocean Area, Admiral Nimitz, is an active theatre of war, and within that theatre of war is the theatre of operations, of which the Hawaiian Department is a part.

Q. Will you explain what you mean, from the military viewpoint, by the terms "active theatre of war" and "theatre of operations?"

A. Well, an active theatre of war is that area which is or may become actively involved in the conduct of the war. A theatre of operations is that part of an active war theatre which is needed for the operations either offensively or defensively, according to the missions assigned or a combination of the missions; and it includes also the administrative agencies which are necessary for the conduct of those operations.

Q. From the viewpoint of military science and study, so that we may see the situation of the Territory in the war picture in the Pacific, will you state very generally the strategic and tactical significance of the Territory of Hawaii in the Pacific war situation?

A. From a military point of view, this group of islands is the keystone of the defense of the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

western coast of our country; beginning in Alaska, with Alaska and the Panama Canal, it forms a large bastion. The security of our west [655] coast depends upon the security of this bastion. And the Hawaiian Islands, of which Hawaii is the most important one, is the apex of this bastion. And, therefore, the preservation of those, and the security of this area, is paramount to the strategic success of our Army and Navy, and also for the defense of our country. Should it be penetrated at any time, we would suffer materially, both tactically and materially, and it would interfere very seriously with the prosecution of the war.

Q. Now, General, turning from the description of the Territory of Hawaii and the Central Pacific Area, will you state what duties have been assigned to you by the War Department and the President in connection with your command here as the Commanding General of the Central Pacific Area?

A. Under my directive of the War Department I have been assigned to command all the ground and air troops of the Army of the Central Pacific Area. And in addition to that, I am to execute and supervise any operations which may be assigned to me by the Commander-in-Chief of the Pacific Ocean Areas. I was also designated, I was also given the mission and designated as Military Governor of Hawaii in my War Department order, which assigned me to this command by order of the Secretary of War.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Now, in addition to your delegation of authority from the War Department, did I understand you to say that you [656] also have authority delegated to you by the Commander of the entire Pacific Area, Admiral Nimitz?

A. Yes, sir, as Admiral Nimitz has responsibility for the entire Pacific Ocean areas which includes, of course, the Central Pacific area, as a segment of his command. He has delegated to me the immediate responsibility for the security of these islands.

Q. In connection with your official duties to carry out the military mission you have described, have you become familiar with enemy actions in your command and in the Territory of Hawaii?

A. I have attempted to familiarize myself with every single detail of the enemy action.

Q. Could you state in a general way what enemy actions have occurred and are probable and likely in this Territory?

A. We are all very familiar, of course, with the tragic events of December 7, 1941, when the Japanese suddenly attacked the Hawaiian group. We know that it is still within their capability to make an attack of that nature. They are also capable of coming here in submarines and executing raids of a various character, with a view of destroying our installations or obtaining information which is much more valuable than the destruction of any installations.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Well, now, General, insofar as the requirements of military secrecy will permit, could you state to the Court [957] any recent enemy action in this Territory?

A. I might review for you, in order to give you the complete picture, the activity of the Japanese in the Hawaiian group. Subsequent to Pearl Harbor there was great submarine activity in these waters. Between December 7th and December 31st, there were innumerable reports of the presence of submarines. The records will show that between December 7th and December 31st Kahului was shelled twice by submarines. On December 30th, the Port of Hilo was shelled, December 30, 1941, by enemy submarines. And on the following day, December 31st, the submarines shelled Nawiliwili, Kauai. On January 28, 1942, an Army transport, the "Royal T. Franks," was sunk by a torpedo from an enemy submarine on a channel between Kanai and Maui. Subsequent to that date there have been recurrent reports and verifications of the presence in these waters of enemy submarines.

To illustrate: Since last March, one year ago, we have official records of the presence of 30 submarines in these waters, the last one on March 10, 1944, just a few weeks ago, within 20 miles of Oahu. In addition to that, there has been aerial activity in this area since the attack upon Hawaii. We have definite records of the presence of two airplanes, at least, and possibly two others. We know that

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

on March—the night of March 4th and 5th, an enemy plane or planes——

Q. What year is this, General?

A. 1942, nearly two years ago—launched probably from [658] enemy submarines, and dropped bombs on Tantalus Hill. As recent as October, 1943, just prior to the Gilbert operations, an enemy plane, probably launched from a submarine, reconnoitered Pearl Harbor at night at a time when the entire fleet was concentrated in those waters preparatory to the sortie for the attack upon the Gilbert Islands.

Q. From a military point of view, is secrecy a prime element of success in such an attack?

A. It is of paramount, transcendent importance. And, even though that airplane did no damage to the Island of Hawaii nor disturb the activity and the routine of life here, had it succeeded in getting the information of the presence of this fleet and transmitting that information to the enemy, it might have caused more damage than the construction of this whole port.

Q. From the viewpoint of the military authorities, do the activities that you have mentioned, air and submarine reconnaissance, constitute the waging of war in this Territory?

A. In my judgment as a soldier, I consider that they do.

Q. Now, do your official responsibilities here require you to make military appraisals of the pos-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

sibility of an attack or an invasion against these islands?

A. Yes, we not only make appraisals but we make them constantly and periodically. We make what is known as an [659] estimate of the situation, which I might explain from a military point of view as estimating the capabilities of the enemy and what you might do to him in view of your assigned mission; the means that are at your disposal for that execution, and the means at the disposal of the enemy for the execution of his mission, taking into consideration, of course, all factors of terrain, weather, etc. We then analyze the lines of action which are open to the enemy and the lines of action that are open to ourselves, and weighing those two we come to a decision. That is know as an estimate of the situation.

Q. Well, have you applied that military function of estimating the military situation to your command here? A. I have.

Q. Well, now, would you state, General, some of the major military factors that enter into your estimate of the military activity that is required of you here?

A. Being charged, as I am, with the immediate security of the Hawaiian Islands, under the directive from the Commander-in-Chief, I naturally try and project myself into the mentality of the Japanese commanders, in order to deduce from their estimate as to what they might do and why they should wish to come to Hawaii and launch an at-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

way against these islands. From that deduction I might point out certain factors which should be very attractive to the Japanese High Command.

In the first place, we have here in the Hawaiian Islands the United States fleet, based in Pearl Harbor. This is a [660] large body of water which offers to the fleet a safe anchorage for rest, recuperation, but above all, for repairs; it contains, as you know, dry docks, storage facilities, large shops, fuel, supplies, and everything that is necessary for the fleet to prosecute this war.

Therefore, if the Japanese could cause any damage to this installation or cause any damage to the fleet units when they are at anchorage at the base, they would succeed in interfering to a disastrous degree with the prosecution of this war. Pearl Harbor today is the most attractive target for an enemy, and in waging war with the Japanese it is in my judgment the most remunerative target in the world today. In addition——

Q. Well, now, are there other military targets in addition to the target available here?

A. In addition to the transcendent importance of the security of Pearl Harbor and the fleet, the Japanese know perfectly well that we have here a large air base, that we have built many fields, that we are concentrating planes at this base, that we are building up our supplies for the prosecution of the war, that Oahu is the center of our communications system for the Pacific area. And, therefore, putting all of those factors down and

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

weighing them, it is such a tempting prize that I know they are not overlooking it now. It may be held in abeyance for the moment, its capture or the [661] attempted capture, but it is certainly in the minds of the Japanese High Command.

Q. Well, do you weigh their capabilities of their approaching such a prize. Is that a factor in your judgment?

A. It is decidedly a factor. The Japanese still have the capabilities of launching an attack against this place. We have not—although we have injured the Japanese fleet, we have disturbed shipping—we have not destroyed their capabilities of attacking Oahu.

Q. Well, in view of the successes of our own fleet, General, could you explain how in your appraisal you consider that the Japanese would be able to make such an attack? Would you be more specific about that capability that you mentioned?

A. We know that the Japanese fleet has not been destroyed; it has never come to grips with our own fleet; it has suffered some damage, just as our fleet at times has suffered damage. We know they still have a number of carriers; and we know that it is well within their capabilities of launching a surprise attack against Oahu and Pearl Harbor as they did on December 7, 1941.

Q. How would the Japanese go about launching such an attack and keeping it a surprise? How could they from a military point of view keep it a surprise?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Yes, that is perfectly possible. The Pacific Ocean is a very large area. It is impossible for our Navy to cover [662] the surface of that ocean either with surface vessels or with air. They could organize task forces, maintain radio silence, move into this area under the protection of a storm or what is known as a cold front, or a zone in which the cold air from the north meeting the south air from the warm air from the south constitutes a large zone of mist—hide in that front and approach very closely to Oahu and escape detection despite all of the technical devices which have been placed at our disposal, such as radars for the detection of such a force. These devices have their limitations. The Japanese know what they are, and would exploit them and stay out of range of our electric detecting devices.

Q. Well, now, is this cold front that you mentioned an unusual or usual weather phenomena?

A. No, that is a very usual weather phenomena. It occurs all the time; the periodicity is, you might say, regular.

Q. Now, in addition to enemy capabilities to strike from a carrier force, is there any other important way in which the Japanese enemy could attack this Territory?

A. Yes, there are several other ways in which the Japanese could attack this Territory. In the first place, they could make use of their submarines. In the new technique of warfare the use of the submarine has been highly developed. They

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

approach within hostile shores at night, launch rubber boats, send parties ashore for information. One of our greatest problems is the installation of the security of these islands, [663] and the only way that security can be maintained is by the strictest exercise of counter intelligence to prevent the enemy from gaining any knowledge of our activity on these islands, of our intentions.

Q. By counter intelligence you mean that branch of military intelligence which seeks to prevent the enemy from obtaining knowledge of your operations? A. Exactly.

Q. I see.

A. In addition to that, we have here in these islands, as you know, one-third of the population which is mixed; 33 and 1/3 of the population of the Hawaiian Islands is of Japanese blood, and therefore there is within that group potential danger of the transmission of information to people of their own race. From submarines could be launched small parties, reconnaissance parties; they could mingle with the population here, completely undetected, and obtain information which would be of such value to the Japanese High Command that it would transcend any attack launched here with a few bombs.

Q. Well, in addition to sending persons aboard for espionage purposes, are so-called commando raids or raiders from submarine feasible in your military experience?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Those are perfectly feasible, and it is a very common practice for submarines to launch commando raids, which would attack our installations, radio, radar, supplies [664] of oil.

Q. Have our own forces used that technique of commandos from submarines?

A. We have used that to a limited extent, but we have used the technique in a very valuable way prior to the occupation of Africa.

Q. You refer to our contact with the French?

A. With the French in Africa, where all the preliminaries were arranged which meant the saving of a great many American lives.

Q. Well, now, General, you have mentioned the character of the population in this Territory. As I take it, that is a military factor in appraising the possibility of attack or invasion here?

A. It is a most decided military factor. It is absolutely necessary that the military commander in this area have some means at his disposal for controlling the movements and the activities of people whom he suspects may be potentially disloyal. Of course, my remarks do not apply to the entire Japanese population. But it would be naive to assume that in a population of 160,000 that we did not find a group of potentially disloyal Japanese. As a matter of fact, we know that some of them are not loyal to America. They have so stated when they have been brought before the internment boards. And I have been forced to put

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

them in interment [665] camps for the security of these islands.

Q. Will you explain what your internment program is and how it relates to military security?

A. Under the operation of this very modified form of martial law which exists in the Territory, we have an internment camp for interning, whether they be citizens or aliens of any blood, of those whom we suspect of disloyalty and who are necessary to be incarcerated for the security of these islands. When the finger of suspicion is pointed at any one of them, they are brought before a hearing board, which is composed of three citizens of this community. The recommendations of that hearing board are then referred to a board of officers composed of a representative of the Naval Intelligence, of the Military Intelligence, and of the F. B. I. The recommendations, then, of both of those boards are forwarded to the Office of the Military Governor, where they are reviewed and final determination passed, whether the accused be placed in the internment camp, whether he be paroled or whether he be released.

In addition to that, the record of every man in the internment camp is periodically reviewed every Thursday afternoon by the hearing board of the Office of the Military Governor. And we release or parole on an average of five or six a week. During the month of March we were forced to intern. I think it was 41; I am not sure but I have the figures. [666]

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The Court: Which year?

The Witness: This year, sir, March of 1944, this past month.

Q. As I take it, a large number are interned, and they keep coming in and going out as you find you can parole them?

A. That is true. On the whole, we have interned since the beginning of the war 1,396, a number of whom have been sent to the mainland.

Q. Now, they include citizens as well as aliens and persons of Japanese blood or persons of other blood? A. Yes.

Q. Depending upon the particular facts that your intelligence service calls to your attention?

A. Exactly.

Q. I see. Do you find among the Japanese any particular group of citizens among whom you are likely to find persons who are not loyal?

A. As you know, the Japanese might be placed into several categories: there are the aliens, pure and simple; there are the Japanese who were born here and are American citizens; there are other Japanese who have been expatriated, and those have been born here but registered by their parents in the Japanese Consulate and upon whom the Japanese Government professes to exercise a certain degree of loyalty and allegiance.

Q. You are familiar with the group of American-born [667] Japanese educated in Japan also, are you not?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Yes, a number of whom have been born here and have been sent back to Japan for their education, which they received, and all their impressions have been formed during their adolescent life.

Q. They are known as the Kibei?

A. Yes, that is the name.

Q. Now, General, is it your experience that in addition to finding persons whose loyalty to the United States is questionable, either in the Japanese part of the population or the other part of the population, that you do find individuals in that part of the population who are entirely loyal?

Mr. Anthony: If the Court please, I have listened at great length here to what I consider as irrelevant testimony to the issues in this case. I would like now to interpose an objection to his testimony. As the Court knows, and Counsel knows, under the Federal statute any person whom a military commander desires to have excluded may be excluded by the operation of the statute upon application made.

Mr. Ennis: If the Court please, on the particular question to which Counsel has objected, I think that it is fair that if the Military Governor, the Military Commander, in the course of his duties and in the course of his military experience generally, has not considered part of the population as having given specific loyalty, that in fairness to that [668] population that should be brought out

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

in the testimony. And it seems to me it is rather a curious question for Counsel to object to.

Mr. Anthony: I think the whole line is irrelevant, your Honor. We are trying a comparatively simple issue here, whether this Petitioner is entitled to a trial by jury for an ordinary act of assault and battery, assault and battery under the Federal statute. I don't see the relevance of this.

The Court: Well, we have entertained quite a volume of immaterial matters, without passing on it. You may proceed, General.

The Witness: I would like to say that there are thousands of Japanese here whom I believe to be very loyal, absolutely loyal. They have shown that loyalty on innumerable occasions. One of the most outstanding examples of their loyalty has been the very patriotic response to the colors of the Japanese when they were asked to volunteer. Their conduct on the field of battle in Italy leaves nothing to be desired. And it is inconceivable that their parents and their relatives, who have so willingly given these men, their sons, for the cause, should be disloyal to the United States.

Q. Now, General, in appraising the military situation, including the military factors you have mentioned, how do you wade into the picture the recent great successes of our fleet? Does not that diminsh greatly the risk of an attack which you [669] have described?

A. The reasons for the success of our fleet lies in the fact that we have been secure in this base.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) It is from this base that the fleet is mounted, that all of our operations are mounted. It is here that is the heart of the operations of the Pacific Ocean areas. If you take any action which is injurious to that heart, you paralyze the activity of the fleet. It might seem, I know, to the layman that when the fleet is far out in the Pacific Ocean areas achieving successes in the Marshall Islands or achieving successes at Panau, that the danger is removed from Oahu. On the contrary, the danger has increased. And I know, as the Military Commander who is responsible for the security of these islands, that when the fleet returns to Oahu the danger increases; that I never go to bed at night when that fleet is here, or even any other night, without wondering. Have we taken every single precaution to exercise the authority conferred upon me in the discharge of my responsibilities?

Q. In other words, these successes, from the military point of view, in your opinion, do not lessen the danger of an attack on these islands by the Japanese?

A. Indeed, they do not, and that cannot be said too emphatically.

Q. Now, General, turning to the subject of the provost courts, which Counsel has mentioned, will you state how you [670] perceived the provost courts to be part of the military security system?

A. Well, in order to enable me to discharge my responsibilities under this modified form of martial law, and in order to achieve the security which is

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

the only reason really for the prevalence and existence of the modified form of martial law here, I am concerned, as a soldier, with my duties of security. We have been obliged to publish regulations for the control of firearms, for the control of ammunition, for the illegal possession of radios, for the illegal possession of cameras, for the institution of the curfew, for the institution of the blackout, for the ejection of undesirables from restricted areas. In order to enforce those regulations, I must have at my disposal some sort of tribunal to that effect.

Under the rules of martial law, we are authorized to appoint what is known as provost courts. These provost courts are nothing more or less than police courts. The layman might say, Why not do away with them? I personally have given great consideration to the elimination of provost courts, in order to try and carry out the directions of the President when he approved the suspension of the privilege of the Writ of Habeas Corpus and also the continuation of martial law in this Territory last, hoping that I would be able to do away with the provost courts and turn the trial of those offenses over to the civil courts. But upon examination of the circumstances I found that it is impossible for the civil courts to try [671] them because they are not offenses against Territorial laws, nor are they offenses against any known Federal statute.

Now, in rebuttal it will probably be said, but under the Organic Act the Governor can publish

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
regulations for the punishment of infractions of these offenses.

Q. Under the Hawaiian Defense Act?

A. Under the Hawaiian Defense Act, as he did in the curfew and the blackout. But I should like to point out that in that instance—assuming that he did and that they were perfectly legal—then the violation of any of those offenses would have to be referred to a civil court for trial, with its concomitant delay. The military are the ones that protect these offenses. The military hold the witnesses, as a rule, and therefore we cannot brook a delay. And there must also be in the punishment a certain measure of retribution. The punishment must be swift; there is an element of time in it, and we cannot afford to let the trial linger and be protracted.

Again, to give another illustration, assuming that the Governor did publish regulations to this effect, I am forced then to be subjected, as Military Commander responsible for the security of these islands, I am forced to the control of another official for the enforcement of my regulations. To illustrate, well, suppose that we did turn them over to the civil authorities and that I had set the curfew, or the Governor had set the curfew at 10 o'clock. An emergency arises, and [672] I feel that it should be changed instantly to 8 o'clock. I call upon the Governor. He says, No;—not arbitrarily but because he has a very honest difference of opinion—no, I think if should remain at 10 o'clock. And he

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

refuses, therefore, to modify his order. What am I to do as Military Commander responsible for the security of these islands? The only recourse left is to reinvoke martial law, and then we are back where we started.

Q. Well, Counsel mentioned the power to set up a military area under Executive Order 9066, and to promulgate regulations in that way. Would that meet your problem of military security?

A. No, it would not, for the following reason: We will assume that we are operating under Executive Order 9066. All of the offenses which are contained therein, if violated by anyone in this Territory, must of necessity be referred to the civil courts. The Military Commander, then, is subjected to all sorts of influences, political and otherwise, as happened in the cases on the east coast in both Philadelphia and Boston, when the Commander of the Eastern Defense Command ejected what he considered undesirable persons from the areas, and he was overruled by the courts and they were put in.

Now, in an area of this character, the Hawaiian group, which is an active theatre of war and which is in the theatre of operations, it is inconceivable that the Military Commander [673] should be subjected for the enforcement of his orders to the control of other agents.

Q. Well, I take it, General, from the military viewpoint, then, you believe that your responsibility for the military security requires that you have an

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
agency under your control to enforce your military security regulations, is that what it comes down to?

A. I do.

Q. Now, General Richardson, based upon your appraisal of the military situation, will you state your opinion as to whether or not there is imminent danger of invasion of this Territory by the Japanese enemy?

A. I shall state from a soldier's point of view the actual reality of the situation, without attempting to argue or define the academic definition of "imminent danger of invasion." We know that, at least we feel quite certain that the Japanese are totally incapable of coming to these islands with a large land-based force for the purpose of seizing and capturing it. We do not think that is within their capability at all. The time for that is past. And, therefore, if that interpretation is paramount in the mind of the layman, it may be eliminated. But you must remember that in law, as in other branches and other professions, times change. There are new developments. When that phrase was written, "imminent danger of invasion," nor the submarine, nor the airplane were in existence, nor were they ever dreamed [674] of. These two new weapons of war have enormous potentialities, and they have introduced into warfare the element of stealth, the element of surprise, and the element of speed. And, therefore, capitalizing on these new elements of warfare, our enemy, the Japanese, has at his disposal today a strong carrier force, destroyers,

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

cruisers, battleships, and airplanes, and submarines, all of which combine those elements of stealth, surprise and speed.

Therefore, they still have the capability of launching an attack, an invasion by air, an invasion by undersea, against these islands. And they have not only the capability itself; it is always impending, as long as as their capability exists, the danger impends and the danger is imminent.

Mr. Ennis: I request this be marked as Respondent's Exhibit for identification, No. 10. (Showing a typewritten document)

The Clerk: No. 11.

Mr. Ennis: No. 11, an account of an interview given by General Richardson to Eugene Burns, Associated Press War Correspondent; and as Respondent's Exhibit for identification No. 12, the somewhat abridged account of that interview published in the Washington Sunday Star of November 14, 1943.

The Court: Any objection?

Mr. Anthony: I have no objection, your Honor.

The Court: Received as Exhibit 11—there are two documents? [675]

Mr. Ennis: There are two documents, your Honor, and we might mark them as you have them presently.

The Court: Exhibit 11-a and 11-b.

(Received and marked for identification Respondent's Exhibits 11-a and 11-b.)

The Court: You don't offer these in evidence?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Mr. Ennis: I only marked it for identification.

The Court: Very well, it may be marked for identification, then.

Mr. Ennis: But, if the court please, there is no objection by Counsel,——

Mr. Anthony: I have no objection.

Mr. Ennis: ——so I do offer them.

The Court: Received in evidence, then, as Exhibit 11, a and b.

(Respondent's Exhibit 11-a and 11-b was received in evidence.)

RESPONDENT'S EXHIBIT No. 11-A

(Copy)

[In longhand]: Appeared in Star-Bulletin Nov. 13th 1943.

By Eugene Burns
Associated Press War Correspondent

Honolulu, Nov. —Oahu could be attacked by Jap planes within four months. Attacked, vital Pearl Harbor installations, army and navy hangars and supply dumps would be primary targets. If incendiaries were used some might be dropped on Honolulu's busy waterfront.

Worse, such an attack might be completed with few Jap planes shot down unless the Japs had the audacity to knife in with a repeat raid.

These are the considered opinions of military experts including Lt. Gen. Robert C. Richardson Jr., commanding army forces in Hawaii and in the central Pacific area.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The bright spot in the dark picture is that Oahu stands ready to destroy any surface or invasion attacks, regardless of their might.

Gen. Richardson expressed these views in a conversation after studying reports about the sighting of an enemy plane the night of October 16. That enemy plane was caught in searchlight beams near Pearl Harbor and escaped.

When the writer said that he was taking bets that Pearl Harbor will be attacked within six months, the general said that he would be willing to reduce the time to four months.

How would the Japs do it is the logical question.

The general replies: Cite one example wherein a 100-plane attack has been stopped. Never. The Germans still raid London. The United Nations' planes, despite flying over hundreds of miles of enemy territory containing radio and sound detection devices, fighter planes and antiaircraft positions, still get their bombloads to their targets with a loss of perhaps five per cent. Never more than 20 per cent.

In the Pacific we recently hit Rabaul catching more than 100 Jap planes on the ground. Wake, Tarawa, Rekata bay—to name a few—are other examples of catching the Jap with his planes down. On Doolittle's Tokyo raid, the carriers Hornet and Enterprise were intercepted 750 miles away by radio-equipped patrol boats and yet Toyko did not repel the attack. Too, the Japs successfully punched

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) through attacks at Pearl Harbor, Manila, Midway, Wake, Guadalcanal, Port Darwin.

Navy Day, Admiral Chester W. Nimitz, commander in chief of the Pacific Ocean areas, stressed the danger of sneak attacks saying that despite the Japs' loss of many surface ships and airplanes ". . . they are still strong enough to inflict destructive attacks at great distances."

Why should Oahu be the target?

An attack upon this fortress fits into the military scheme. It is beyond calculation what it would be worth to the enemy to cause Pearl Harbor serious damage at this stage of the war. It is the base from which we must defeat Japan. And if this naval base is destroyed it will delay the defeat of Japan. At the same time, an attack on Oahu offers the Jap carriers some hope of getting back to home base. Hitting the west coast, they might be outflanked and destroyed as was the German warship Bismarck. Hitting Aleutian bases is hardly worth risking the ships.

Too, when our battleline is drawn a thousand miles west of Pearl Harbor—as inevitably it must be—why not send an attacking force around the end of our line to slash at our operations base?

Lt. Gen. Simon Bolivar Buckner Jr., head of the Alaska Defense Command, often pressed this point home to me: "When faced by superior forces, as Japan is now, she chooses to attack rather than to fight a defensive action."

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A second Pearl Harbor would fit into the Jap commands' mental picture. For vainglorious face-lifting what could be better propaganda than a second attack on Pearl Harbor with a second set of smoke-filled pictures.

With what would the Japs make such a raid?

It is known that Japan has a first rate carrier force with which she has been extremely cautious since Santa Cruz, October 26, 1942. The chances are remote that she will risk these in ship for ship action. To date, in every action the Japs used carriers only when they had us outnumbered two to one. There remains then the sneak raid use. The Jap command is not timid. Their first six months' bold army and navy campaign wrested them one of the world's largest and richest empires. Audacity was the chief ingredient.

Why would the Japs attack in the next four months?

The Japs know North Pacific weather, much of which originates in the Jap Kurile islands and in the Japanese current north of Oahu. This warm current meeting the cold Aleutian weather breeds fogs. Within the coming four winter months, the fog belt moves closer to Oahu. December, two years ago, the Japs patiently waited for this fog, then as a storm swept south to Oahu, they sneaked in under its protecting cover.

Which part of the day would they likely come?

More than likely, morning. The Japs' carriers would be laying off during the previous day and they

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

would probably make their run-in as soon as our afternoon patrols had flown out their leg and were returning to Oahu by dark. The Jap carriers would highspeed to within 350 miles of Oahu so that no extra gas tanks on the planes would displace part of their essential destructive bombloads. Bombers launched, the carriers would reverse course quickly.

The Japs more than likely would expend their pilots—each pilot and his comparatively light, quickly built plane would be part of the bomb. With this knowledge, he would ride the bomb home! The Jap has yet to show any fine feeling about saving carrier personnel. During Pearl Harbor, many Jap pilots dropped into the water unable to reach their fleeing carriers. At Dutch Harbor, Jap pilots were heard screaming for their departed carriers. At Midway, they had no carriers left to come to. However, screening ships, instead of taking personnel off the burning carriers, turned their rifles upon their own ships and to hell with the men, according to eyewitness Ens. George H. Gay of Torpedo Squadron 8. At Santa Cruz, the last carrier battle, Lt. Cmdr. William J. (Gus) Widhelm from a liferaft saw many Jap pilots crash dive into the ocean unable to overhaul their fleeing mother ships.

What about our (deletion) sound detection devices? Will they not alert The Rock in time?

The Japs who have many of these devices know their shortcomings as well as ours. (Deletion) Following previous attack patterns, the Japs could come in low, climb quickly and come in from a fairly

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
high altitude to avoid antiaircraft fire and interceptor planes.

Even though our pilots slept in their interceptor planes and had their motors turning it is doubtful if a sufficient number could be at an effective height in time to repel the raid before it reached the objective.

What of our antiaircraft fire?

Most coastal cities have but one cheek facing the ocean threat: Oahu has both cheeks to slap and the back of the neck. With altitude, travelling fast as Jap planes do, the Jap bombers would release their load more than 5,000 feet out from the target.

That gives AA guns xxxxxxx only a few seconds, about ten, if they are lucky before the bombs are released. And many of the gunners behind those batteries have never shot at live swiftly maneuvering targets—only at sleeves towed slowly at a straight course and at an even speed. If 10 per cent of the enemy planes were shot down before they released, it would be a high score, military officials believe.

It remains that one Pearl Harbor attack (December 7, 1941) did prove successful despite almost weekly alerts and drills; that on March 5, 1942, an enemy plane or planes dropped three or four 500-pound bombs on Tantalus Drive behind Honolulu; that on October 16, 1943, midnight, a lone, slow enemy float-type plane got within searchlight distance of Oahu and was not shot down.

Finally, because the majority of these planes got away—just as ours do after every raid on Jap

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
bases—it means that there is a good chance that many of the Jap planes may actually get away to make a return trip to their carrier—if they find it, or a water landing near destroyers to be rescued if the Jap high command has turned soft. As Gen. Richardson has pointed out: Don't our planes come back from our surprise attacks?

Rest assured, what can be done to repeal an enemy attack is being done on Oahu. The emphasis is on speed. Oahu's military garrison sprang to instant alert when the lone raider appeared last month. Each morning, the commanding general makes his rounds and to his officers he forever drives home this point: "We can be bombed: We will be bombed: We must be ready!" -eb/november 4/1943/2:28p—

AIR
Nov. 9, 1943

Dear Mr. Turnblad:

Will you please see that the following deletions are made in Gene Burns' airmailed interview with Gen. Richardson on Hawaii's defense weaknesses? The story inadvertently was mailed without submission to navy censorship.

24th graf, starting at top of page 4 make read "What about our sound detection" etc. Eliminating 2 words "Radio and."

25th graf starting "The Japs who have many" eliminate second sentence starting "Flying x x x." Next sentence make read "Following previous at—

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

tack patterns, the Japs could come in low, climb quickly" etc. (inserting "could come in low,"

These changes, although they might appear minor, are considered very important by the navy and must be made.

Thanks,

/c/ MAC
Chief of bureau

Charles H. McMurtry
cc for cable desk

Please inform us via Press Wireless or cable when you're releasing story, so can use here and Hilo simultaneously.

MAC

[Endorsed]: Filed 4-11-44.

RESPONDENT'S EXHIBIT No. 11-B

A-4 The Sunday Star, November 14, 1943

Gen. Richardson Sees
Another Pearl Harbor
Attack in 4 Months

By EUGENE BURNS,
Associated Press War Correspondent

HONOLULU, Nov. 13.—The commanding general of Army forces in Hawaii believes another Japanese attack on Pearl Harbor is likely within the next four months.

Vital installations, Army and Navy hangars and

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

supply dumps on Oahu Island would be the primary targets. If incendiaries were used some might be dropped on Honolulu's water front.

These are the considered opinions of military experts, including Lt. Gen. Robert C. Richardson, jr., commanding Army forces in Hawaii and in the General Pacific area.

Gen. Richardson expressed the views in a conversation after studying reports about the sighting of an enemy plane the night of October 16. That enemy plane was caught in searchlight beams near Pearl Harbor, but it escaped.

Would Be Excellent Propaganda

When the writer said that he was taking bets that Pearl Harbor would be attacked within six months, the general said that he would be willing to reduce the time to four months.

An attack on this Fortress fits into the military scheme. It is beyond calculation what it would be worth to the enemy to cause Pearl Harbor serious damage at this stage of the war. It is the base from which we must defeat Japan. And if this naval base is destroyed it will delay the defeat of Japan.

For vain glorious facelifting, what could be better propaganda than a second attack on Pearl Harbor?

The bright spot in the picture is that Oahu stands ready to destroy any surface or invasion force, regardless of its might.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Might Try Sneak Raid

Japan has a first rate carrier force with which she has been extremely cautious since Santa Cruz, October 26, 1942. The chances are remote that she would risk these in ship-for-ship action. To date in every action the Japanese used carriers only when they had us outnumbered two to one. There remains then the sneak raid.

Why would the Japanese attack within the next four months?

They know North Pacific weather, much of which originates in the Kurile Islands and in the Japanese Current north of Oahu. This warn current meeting the cold Aleutian weather breeds fogs. Within the coming four winter months, the fog belt moves closer to Oahu. December, two years ago, the Japs patiently waited for this fog, then as a storm swept south to Oahu, they sneaked in under its protecting cover.

Rest assured, what can be done to repel an enemy attack is being done on Oahu. The emphasis is on speed. Oahu's military garrison sprang to instant alert when the raider appeared last month. Each morning, the commanding general makes his rounds and to his officers he forever drives home this point: "We can be bombed; we will be bombed; we must be ready."

[Endorsed]: Filed 4-11-44.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

By Mr. Ennis:

Q. General Richardson, based on your knowledge of facts, from the military viewpoint, was there an actual invasion of this Territory on December 7, 1941, by the Japanese enemy?

A. In my judgment, there was.

The Court: May I have that question?

(The Reporter read the last question.)

Q. General Richardson, I call to your attention Respondent's Exhibit 11, a and b, in evidence, and ask you to [676] examine it, and then will you state whether on any occasion prior to this trial have you testified, or rather, have you stated publicly that there was a danger of attack on this Territory? (Handing witness a typewritten document)

A. Yes, I can identify these documents as the transcript of an interview which I gave to Eugene Burns, the Associated Press Correspondent, in which I expressed the view then, in November.

Q. Last November?

A. Last November, 1943, that I thought that there was a danger, constant and impending, of the Japanese attacking Oahu.

Mr. Ennis: That is all, General. Thank you.

The Court: You will probably be subjected to cross-examination. Do you want a recess?

The Witness: No, sir; I'm perfectly all right.

Cross-Examination

By Mr. Anthony:

Q. General Richardson, would you say that Ger-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

many is now being invaded by virtue of bombings that are being conducted?

A. Indeed, I would. I don't know how Germany could be invaded in a more catastrophic manner.

Q. And would you also say that the British Isles are now being invaded? [677]

A. They are, periodically.

Q. And, if it is true that our submarines are plying the home waters of Japan, then Japan is being invaded by us, as you used that expression?

A. I am sure that the Japanese regard the presence of our submarines in their waters as an invasion of their sovereignty.

Q. I am not asking what the Japanese think about it. I'm asking you what you think about it.

A. I think so.

Q. Then you disregard entirely the notion of an occupation by land troops in the course of an invasion? A. No, I didn't say that.

Q. You don't think——

A. Nor do I disregard that. That is one of the factors involved, but it is remote. It is remote.

Q. I didn't get that. A. It is remote.

Q. I notice, General, in the "Rules of Land Warfare," Field Manual No. 27-10—I don't know whether you are familiar with that or not. Are you? A. Well, I read it from time to time.

Q. Well, this isn't so old. It was published in 1940, General. This is what the manual says——

Mr. Ennis: What page is that, Mr. Anthony?

[678]

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Mr. Anthony: Page 74. (Reading)

"The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it cannot be said that such district is under his military occupation."

I gather that you don't use the word "Invasion" in the same sense that they use it in the "Rules of Land Warfare."

A. I'll reaffirm what I stated in my direct testimony, that I personally am not concerned with the definition of invasion, or any of the terminology in the books. That, to my mind, is purely academic, and that's a matter to be decided by the courts. I am here to state, as a soldier, what I believe to be the conditions in this Territory which necessitate the continuance of the authority which I now exercise under this modified form of martial law.

Q. Now, General Richardson, it is true, is it not, that the front combat areas in the Pacific are some two thousand or twenty-four hundred miles away from Oahu, is that a fact?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. No, that is not a fact. I have stated in my direct testimony that a portion of the combat areas are forward or west of here, but I consider the Hawaiian Islands in the combat zone.

Q. I don't believe you said that in your direct examination, [679] General Richardson.

A. Well, then, I should like to say it on cross examination.

Q. What you said on your direct examination was that the whole area was an active theatre of war, and that Hawaii is a theatre of operations. I understand you now to say that this is a combat area.

A. Well, but the theatre of operations, Mr. Anthony, it comprises the combat area. If I might define that for you——

Q. Yes, I am very ignorant of this.

A. I don't mean to infer that you are. But the theatre of operations is a delimitation of the active war theatre. Now, the theatre of war which is designated by the Joint Chiefs of Staff is subdivided into theatres of operations. This whole Pacific area is a theatre of war, but they have theatres of operations under General MacArthur, under General Stilwell in India, and we have one under Admiral Nimitz in the Pacific Ocean. So the theatre of operations includes the terrain where the Armies operate.

Q. Is there any military parlance that indicates that portion of the earth's surface where the fighting actually takes place? A. Yes.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. What is that called?

A. Combat zone. [680]

Q. You would not call Hawaii a combat zone?

A. [illegible], I would, because the theatre of operations or the combat zone also includes that part assigned to your mission, whether it be offensive or defensive. We are on the defensive mission here in Oahu, whereas the fleet operates offensively from here, and some of our troops which are based here operate offensively from this base. But concurrently with its mission as an offensive base, we have a very decided mission here as a defensive base, and that defensive mission designates or characterizes it as a part of the combat zone.

Q. Then a combat zone can be an area where no shooting is going on at all?

A. Oh, yes; oh, yes.

Q. No real destruction of life or property?

A. Absolutely. In France I used to wonder sometime if we went to a picnic there in the front lines.

Q. Well, do you have any term, military term, that precisely fits the place where life and property is actually being destroyed as a result of organized warfare? A. Yes, the battle.

Q. Battle? Where is the battle in the Pacific at the present time? A. It is in various places.

Q. Well, we are informed through the communiques that we have shoved the lines west of the Marshall Islands. That, I assume, is correct. [681]

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I don't know what communique you are referring to.

Q. The communiques of the Pacific Fleet Headquarters, which have announced the occupation by the military and naval forces of the United States the Marshall Islands. That is correct, is it not, that we now hold those islands?

A. Yes, mostly.

Q. We also hold the Gilbert Islands?

A. Yes.

Q. How far are the Marshalls from Hawaii, General, roughly? A. About 3,200 miles.

Q. Is that nautical miles or land miles?

A. Nautical miles.

Q. It is also true that we have pierced further into the defensive ring or are continually attacking Truk, according to the reports that come to us from the communiques, is that a fact?

A. We are continuing the offensive against the Japanese. The targets vary from day to day.

Q. But the targets are west of the Marshall Islands, are they not?

A. For the moment.

Q. Are there any east of the Marshall Islands?

A. At the present time I know of none except within the Marshall Islands; we have a number of targets against which we are operating daily. [682]

Q. Sometimes mopping up there?

A. I won't say it was mopping up.

Q. Well, do I understand you to say that the farther the fleet pushes the enemy west in the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Pacific, the more danger there is here in Hawaii?

A. I do, most decidedly, and I cannot repeat it too emphatically.

Q. Well, General, that's a little difficult for a layman to understand.

A. Well, let me try and explain it to you.

Q. I wish you would.

A. I can well understand that a layman would hold the point of view that you have just expressed. But you must remember that in order to keep that fleet going there has got to be a motive force, a motor, so to speak; that motor is located here; the heart of the operations of the Pacific Ocean is right here in Oahu and is going to remain here until the end of the war. When the old knights went into battle, what did they protect first? They put armor around their hearts, because their arms and their feet and their eyes and the rest of their bodies were useless unless that heart was protected. Analogously, our aviators today have been provided with a breast plate. Why? So as to protect the vital areas of the body.

The most vital area of this whole Pacific Ocean area is Oahu, and it is going to continue to be the most vital area [683] until the end of the war. And, therefore, while it may appear to the layman that our fleet is gaining great successes as we go west, those successes are absolutely dependent upon this place, and the paralysis of this place would render completely useless that fleet which is so successful today in the West Pacific.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Well, you have told us, General, that in your judgment the Japanese couldn't organize enough force in the Pacific to capture Oahu.

A. I did not say that. I said——

Q. I understood you to say that.

A. I beg your pardon. I said that the capability of the Japanese today organizing surface-borne vessels, transports accompanied by war vessels, to bring to these islands a force for the invasion of these islands is remote. We do not think that they are capable of doing that now.

Q. Is it a fact that the high tide in Japanese aggression was reached in the battle of the Coral Sea and in Midway in the Pacific?

A. I believe this, that the Japanese came down to Midway with those transports and with that navy with the idea of seizing Midway, occupying it as a jumping off place for the occupation of these islands. And, therefore, when they were defeated at Midway, their chance of organizing this ocean-borne force, of which we have been just talking, failed; and from [684] that day to this, they have never been able to recuperate sufficiently to warrant them taking the risk. But they have the capability if they want to take it. It may not be as strong as they would like to have it.

Q. It is a fact, is it not, that our Navy has increased tremendously since that time?

A. It has increased appreciably.

Q. As much as ten-fold?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I am not in a position to answer that question.

Q. I see. General Richardson, getting down to the business of this case, I would like to have your views as to why, what is the military reason that requires the trial of what is an offense under the laws of the United States, of assault and battery, down in the provost court? What is the military reason?

A. Well, in this particular case I can well understand that the layman would think that it was an ordinary street brawl. The young man in question, however, did not attack a simple citizen walking along Kamehameha Highway or any other place in Honolulu. He interfered with the assigned duties of a sentry in time of war. He assaulted two marines. He exercised his privilege, I am told, of getting drunk, losing control of himself, and trying to force himself into one of the installation here, with which both the Army and the Navy are charged with absolute security.

Q. Who told you that? [685]

A. It was published in the papers. I read it.

Q. Very well.

A. Testimony of the marines. Therefore, Mr. Anthony, it is not an ordinary street brawl.

Q. What's the military reason, in your opinion?

A. Because we have to uphold the authority of the sentinels, which we place there. That sentinel may have shot that man. He would have been tried

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

by Courts-Martial and I have no doubt that he would have been acquitted. You must remember that when we placed a sentry on duty, that young man has very grave responsibilities. Day after day, my Judge Advocate brings up to me records of Courts-Martial where these young boys have fallen asleep on posts. It seems tragic at times to have to punish them with sentences of three to five years, but we have to do it in time of war. Upon their alertness, Mr. Anthony, depends the safety and the welfare and the lives of hundreds of others of their fellowmen. This young man interfered with the sacred duty of a sentry.

Q. Well, that is a matter of dispute in this case, General Richardson. What I am trying to get from you is, why do you think we have got to have the provost courts? You first said that on account of the delays of the civil courts. Is that one of your reasons? A. That is one reason, yes.

Q. You know that to be a fact, that there are delays in the civil courts of this Territory? [686]

A. I would not say in the civil courts of this Territory because I am not familiar with them.

Q. Well, that is what we are talking about.

A. But I say this: I draw on my general experience.

Q. Well, is there anything else besides the delays of the civil courts?

A. Oh, yes, there are many reasons why we should have control under the provost court system.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
I thought I outlined that very elaborately in my direct testimony.

Q. One of the things you said was that you had to have some instrumentality to enforce your orders?

A. Yes, which are not offenses against the Territorial Courts or the Federal Courts.

Q. You are familiar with the fact that they could be made such?

A. But, as I said, even though they were made offenses, I would still have to go before the courts, the civil courts, which is objectionable when the offenses are of this character that rest upon security. And you place the Commander, then, of the area under the control of other agents for enforcement of his regulations when he has the responsibility of security. Are you going to take the responsibility for the security of these islands? Is the Court going to take the responsibility for the security of the fleet? Is Governor Stainback going to take the responsibility for the security of the fleet? No. I have it. And, nor my conscience and nor my duty will ever [687] make me say that I don't need the authority that goes hand in hand with my authority.

Q. You make no distinction between the trial and conviction of a non-military offense and your mission as a soldier to defend these islands and to project the offensive to the west?

A. All of these incidents, including this one, are integrated in that general security program. We

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

cannot make those refinements and distinctions when we have those responsibilities. And you would take away from me and weaken my authority.

Q. Do you think that that would interfere with the progress of the war?

A. I do, most decidedly.

Q. If I may finish the question, if a person who is charged with, I still say an offense against the laws of the United States, was tried before a jury and we found out whether or not this man was telling the truth or the marine was telling the truth. would that weaken your authority?

A. Then why don't you refer every case that goes before the police court to a jury? Have you no confidence in the integrity of the provost judges? They are very carefully selected. You must remember that those provost judges are Americans just like you, only they have on a khaki uniform. They came from civil life, and when this war is over, they are returning to civil life, and they are just as watchful and [688] jealous of the civil liberties of our citizens as are you. I am also. I, Mr. Anthony, could well understand that the layman would object to the exercise of an authority by a Commanding General through the instrumentality of a provost court, if there were any abuses. But there are no abuses in the provost courts. On the contrary, the provost courts have been administered with a super-abundance of consideration for all concerned. They have been exercised with discretion.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. I am sure you are painting a much rosier picture than you would if you knew all the facts.

A. I think I do know the facts, because I confer almost daily with my Executive Officer, Colonel Morrison, on provost court procedure.

Q. General Richardson, do you know any of the facts as to the operation of the provost courts before you came down here?

A. I am not familiar with what preceded my entry into this theatre.

Q. You know nothing about the meting out of five-year jail sentences for ordinary misdemeanors?

Mr. Ennis: The witness has answered the question, your Honor.

Q. General, your article in the Army and Navy Journal, you have prepared that yourself?

A. That is not a fair question.

Q. Why, I didn't mean to be unfair, but do you approve [689] the views expressed in that?

Mr. Ennis: Which article is this? (Mr. Anthony shows Mr. Ennis a photostat).

Q. Do you recognize this as your article? (Handing witness a photostat).

A. Yes, I do.

Q. And you believed the statements that you made in this article at the time you stated them, did you not? A. Yes.

Q. And you still believe them?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I'd have to refresh my memory on the statement to which you are going to refer.

Q. Well, you state here, for instance, about the Japanese:

> "The dangerous and potentially dangerous aliens and citizens have been arrested and interned by the Army. The remainder have proved on innumerable occasions that they are loyal to America."

A. Well, of course, that's a statement, Mr. Anthony, of very general character. When you are writing an article such as that, it is impossible to go into all the details and say that so many thousands are loyal, so many thousands are suspected of being potentially disloyal, etc. I brought out in my direct testimony the opinion that I hold of the loyal Japanese, but I also reiterate that in this community I am positive that there are many potentially disloyal Japanese.

Q. Simply because of their racial ancestry? [690]

A. No; that is one factor; but for the reason that we are constantly picking them up day after day and bringing them before our hearing board, and they admit that they wish Japan to win the war. We have never had a Japanese come up and tell on another Japanese that he is disloyal. They will come and testify as to their character or their activity, but they will never impugn the loyalty of one of their own. And that does not happen with the Germans nor does it happen with the Italians.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

our other enemies. Therefore, we have a right to be suspicious; and I, charged with security, it is my duty to exercise a super-abundance of caution.

Q. Getting back to why we can't try these offenses either under a Federal statute or Territorial statute, I believe you said the trouble in Federal Court was that there were political influences such as existed on the east coast of the United States.

A. I said influences, political or otherwise. I think that——

Q. Are you fearful of that in this area?

A. Always. I am fearful always of political influences because that is what life is. Our whole life is political. There is hardly a problem that comes up to be solved in this community that there are not pressure groups of all sorts; they come into my office every day.

Q. General, is there any reason, any fact that exists [691] down here that wouldn't make all of these things, as you say, fully applicable as to what ought to be done in California or Maryland or Pennsylvania?

A. I don't think I quite understand the question.

Q. As I understand you, the Military Commander must be able to have his orders carried out, and he can't be bothered with any other agency except something that he can order to do?

A. "Bother" is hardly the word to use, because that implies a disregard, a lack of respect on the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

part of the Military Commander. That is not true.

Q. Well, I didn't mean to imply anything.

A. Well, it was the word that you used.

Q. Well, you shouldn't brook any interfernce?

A. No, it isn't as strong as brooking any interference. It is adherence to the principle, Mr. Anthony, that where you charge a man with responsibility, you must give him the authority to exercise that responsibility. And if you refer to civil courts offenses which have been characterized as offenses by the Military Commander, you are placing, therefore, in the hands of another agent the enforcement of your regulations. And if he doesn't choose to enforce them the way you feel they should be enforced, your authority, therefore, is diminished and in time even nullified.

Q. Then you think the Western Defense Command was injured by that program in California? Is that the result [692] of that?

A. I don't care to express an opinion on that. I am dealing with the local situation.

Q. But you are dealing with it in such a general phase, General Richardson, it seems fully applicable to any other East or Southern Command, then, is that not a fact?

A. Yes, I do think this, that this Commanding General of the Eastern Defense Command was placed in a very embarrassing position by the ruling of the court in returning to the jurisdiction of the First Corps Area the citizen who was ejected,

or alien—I don't know whether it was a citizen or an alien.

Mr. Anthony: May we have a 5-minute recess, your Honor?

The Court: Yes. We will have a recess.

(A recess was taken at 10:27 a.m.)

After Recess

Cross-Examination

(continued at 10:40 a.m.)

By Mr. Anthony:

Q. General, is it your military judgment that the present blackout is necessary for the defense of these islands?

A. You mean in its modified form?

Q. The existing blackout regulations.

A. Yes.

Q. Do you know what the practice is in the Gilbert and the Marshalls and Guadalcanal in regard to blacktout? A. Yes. [693]

Q. Could you tell us that without divulging any secrecies?

A. Perhaps I answered a little too categorically. I could not state with certainty what the conditions are, but generally speaking there is no blackout.

Q. And the blackout that exists here exists in places other than military and naval installations, is that not a fact? A. Here?

Q. Here in Oahu?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Yes, the entire city is blacked out after 10 o'clock.

Q. The waterfront? A. No.

Q. Pearl Harbor?

A. No. They are allowed to have their lights because they have to work. It is in the prosecution of the war.

Q. Now, when the fleet pushes farther west, as we are now informed they are doing in Palau, as I understand you the imminent danger of invasion of Hawaii increases? That is your testimony?

A. No, I did not say that. I said that I would not argue the question of the imminent danger of invasion. I say that the danger of an attack on Hawaii is always imminent and impending, and that danger increases wher the fleet is here in port. It is much greater when the fleet is in port than when it isn't.

Q. Well, when the fleet is in port, are the restrictions [694] on the blackout and other regulations of civilians increased any?

A. I don't think I should answer that question, Mr. Anthony. I don't think it would do any good to answer that question.

Q. Well, if that is your judgment, we'll accept, the Court will accept that, I think. You prefer not to answer that question?

A. I would prefer not to answer that question. I might modify that by saying——

Q. I don't want anything that you feel, as Mili-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

tary Commander in this area, you shouldn't say.

A. We have to be alert.

Q. General, are you familiar with the Biennial Report of the Chief of Staff of the U. S. Army, covering the period of July 1, 1941, to June 30, 1943?

A. I know that the book exists and I have read it, parts of it. I could not say that I was thoroughly familiar with it.

Q. General Marshal tells us in this book that the war is in, as he describes it, five phases. Are you familiar with that part at all?

A. No, but if you will refresh my memory——

Q. Well, I will refresh your memory. The first phase he treats, General Marshal says—and this is in his report [695] to the Secretary of War:

> "In my first report, which covered the period July 1, 1939, to June 30, 1941, events were treated in two phases. The first phase included the fall of France."

Then he goes on to say:

> "The second phase commencing with the Battle of Britain and terminating with the German declaration of war against Russia."

Then he goes to what he calls the third phase, which brought to an abrupt conclusion the Japanese attack of December 7, 1941. The fourth phase, the complete mobilization of the power of the United States, and the fifth phase, which he says we are in now, and this is what he says:

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

"The fifth phase in which we are now engaged involves the launching of Allied military power against our enemies in a series of constantly increasing offensive blows until they are beaten into complete submission."

You agree with that analysis of the stage of warfare that we are in at the present time?

A. Yes, we are engaged now in attacking our enemies.

Q. General Marshal also says:

"Immediately after Dunkirk the British Isles were in effect defenseless insofar as any organized and equipped ground forces were concerned. Practically all their field Army and equipment had been lost, and an immediate invasion was threatened."

Would you say General Marshal uses that expression accurately in that connection, the situation of the British after Dunkirk?

A. It would be impossible for me to state just what General Marshal had in mind when he made that statement. [696]

Q. Well, presumably he is a soldier like yourself and used to precise military terms, is he not?

A. He is speaking very broadly.

Q. Would it be of any significance to you, as an expert military commander, to know that no place in either the Army's or Navy's description of December 7th attack that incident is referred to as anything other than an attack or an assault?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I haven't analyzed the reports to that extent.

Q. Well, have you ever seen a military report which has treated the raid of December 7, 1941, other than as an assault or a raid, as distinguished from an invasion?

A. It must have been in the mind of Governor Poindexter that it was an invasion when he invoked the provisions of the Hawaiian Organic Act and came down to General Short and turned over to him the powers of the Government.

Q. Well, at that time we were hearing rumors that parachute troops were landing in Manoa Valley, General, Maybe that's what the Governor had in mind.

A. I have no idea what he had in mind.

Q. Have you examined the proclamation of General Short and Emmons? A. I have.

Q. It's a fact that they referred to that opening of the war as an attempted invasion, isn't that so?

A. There is nothing that I know of in the law that specifies the degree of the invasion or the degree of imminence. [697]

Q. I am just asking you about the fact now. We will talk to the Court about the law. That is a fact, they called it an attempted invasion, both Generals?

A. I would have to refresh my memory.

Q. Well, we have it right here, General.

A. If they said it, it is there; that's all there is to it.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. This is a very bad copy, General. (Handing the witness a file of papers). That's a proclamation of General Short of December 7, 1941. If you can examine that paragraph that I have indicated here—in that proclamation, General Short refers to the many means of attack by the enemy and a possibility of invasion. Do you think that he was using that expression inaccurately at that time?

A. No, I do not think so.

Q. And that was an accurate description of what was taking place out here on December 7th?

A. If that was General Short's idea, I presume it was accurate.

Q. It was reaffirmed by General Emmons when he took over this command.

A. I am in no position to pass judgment on their judgment at that time, but I presume that it was accurate.

Q. They had complete knowledge of the facts, presumably? A. Presumably.

Q. Being here. At the present time we have definite [698] air superiority in the Central Pacific area, do we not?

A. I believe that we have.

Q. And is this report of General Marshal accurate in referring to this theatre: (Showing witness a book).

"Air superiority was demonstrated by a loss ratio of four to one in our favor."

A. If General Marshal stated that, I am sure

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) that it was based upon accurate intelligence and information.

Q. Are you able to give us any closer appraisal as to what the air superiority is at the present time? This was dated June 30, 1943.

A. I am not.

Q. Have we increased our air superiority over the Japanese since June 30, 1943?

A. Yes. But you must remember that that isn't referring to the whole Pacific area, unless I am mistaken.

Q. Well, I'll read the paragraph, if you'd like to hear it:

"The United Nations in the Pacific Theatre—" Now, what does the General mean?

A. He refers to everything, including General MacArthur's area.

Q. That's what I thought.

> "—now possess more secure positions from which to counter Japanese offensive ventures. Also, Commanders and troops had secured valuable experience in battle. Unified command arrangements have welded sea, air and ground forces into efficient fighting teams. Air superiority was demonstrated by a loss ratio of four to one in our favor. And a more complete [699] control of the sea made possible by the skip bombing tactics perfected in the southwest Pacific by General Kenney's airmen."

General Marshal is talking about the entire theatre, is he not, the entire Pacific theatre?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. It would seem so.

Q. General Richardson, getting back to our system of provost courts, is it fair to say that the reason that you do not desire to have military regulations enforceable either in this Court or in Territorial courts is that you do not have confidence in the judges who would administer the regulations?

A. Oh, by no means, by no stretch of the imagination. I would like to make that just as emphatic as possible. My whole position in this matter is that, having responsibility, I must have the authority to enforce my orders. And, inasmuch as the laws of the territory and the laws of the Federal Government do not characterize as offenses the offenses which in this Territory are considered essential to security, and the violation of which must be punished quickly, then we must have some means, some military tribunal at my disposal to handle those cases in order to enforce my authority. And, as I repeated, and I state again, that if it were possible for me to transfer, to eliminate the provost courts and return that authority to the civil courts, I would be the first to advocate it. I have studied that problem for the last three months. When I first approached it, I thought that I would be able to do it. But after many conferences on the subject, I came [700] to the conclusion that I would be weakening my authority. I am faced here with a reality. I am not faced here with academic questions. And if I sense the feeling of this community correctly, en-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

forced by the sentiment and feeling of our Nation as a whole, we are in no mood to have another Pearl Harbor.

Q. What do Military Courts have to do with military disaster, General Richardson?

A. It has a great deal to do with its repetition, because it allows the Commander to so enforce his orders as to instill into the offenders a fear of violation thereof.

Q. Well, the raid on Pearl Harbor had nothing to do with the civil population, did it, General Richardson?

A. Not at that particular time. Remember, we were not at war when the raid occurred.

Q. No, but I am just trying to find out how you relate those two things.

A. Let me try and explain it again. I can understand that it is very difficult for a layman to appreciate what responsibility in this area means. But I know that we have here thousands and thousands of American boys in the services who have given up a lot of their civil liberties, too. I have renounced a great many of my civil liberties in donning the uniform. And you must remember that in this area all of these young men, officers and men, and women, too, who are serving in the Armed Forces, they willingly gave up those because down in their hearts they know it is right. Now, it may be against [701] academic questions for a military commander to have a tribunal in a civil community such as this, which is a part of our Territory, to en-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

force his orders. But we are in a very special position here on the Islands of Hawaii. As I have stated, we are in the combat zone; we are in an active theatre of war; we haven't got a homogenous population, we have a heterogenous population with all sorts of affinities and loyalties which are alien in many cases to the philosophy of life of the American Government. And these boys out here in the defense area are entitled to security. Our fleet is entitled to security, without any academic questions entering it at all.

We are faced with reality, and, as the motto of the D.A.R. is, "Eternal Vigilance Is The Price Of Liberty."

I cannot, as a soldier, renounce my duty or what my conscience dictates in order to carry out the mission of the Commander-in-Chief, Admiral Nimitz. And I know this, too, that the people on the mainland feel the same way, that this place shall be secure. And they would never forgive any letdown in regulations or measures to insure their security. And they are out here in this area, these soldiers, and they, too, as I say, have renounced their liberties and they are suffering a great many spiritual wounds, separated as they are from their families, as well as flesh wounds.

And I feel that you are trying to weaken my authority here, that you are trying to take away from me the measures that will insure the security of these islands by the elimination [702] of these provost courts and the abolition of this partial and

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

very mild form of martial law which in no way interferes with the activity of this community.

Q. All I am trying to do, General Richardson, is to give this boy here the kind of a trial that the Constitution and laws of the United States say he is entitled to; that is all I am trying to do.

A. He has gotten as fair a trial as thousands of soldiers in the Armed Service who appeared before the summary courts, the one-man court. He committed a military offense. He didn't commit a civil offense. And therefore he goes before a military tribunal.

Q. You make no distinction between your Governmental or political mission and the military mission? It is all one, so far as you are concerned?

A. My mission is not political. My mission——

Q. I mean political in the highest sense, Governmental.

A. Well, if you want to put it in the intellectual sense, there is a certain affinity.

Q. Yes. You make no distinction?

A. No.

Mr. Anthony: I think that is all.

Redirect Examination

By Mr. Ennis:

Q. General Richardson, Franklin D. Roosevelt, in his [703] Alien Enemy Proclamation of December 8th, giving authority to deal with aliens of Japanese ancestry, stated:

"As President of the United States, and as

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Commander-in-Chief of the Army and Navy of the United States, I do hereby make public proclamation to all whom it may concern, that invasion has been perpetrated upon the territory of the United States by the Empire of Japan."

From the military point of view, do you agree with that statement? A. Yes, I do.

Q. General Richardson, you referred to certain litigation on the east coast of the United States. Do you know whether that area was an active theatre of war?

A. At that time it was classified as a theatre of operations.

Q. Not an active theatre of war? A. No.

Q. Of course, the population——

A. It was a potential theatre of war.

Q. It does not contain the Japanese population that you have here. Now, General Richardson, based upon your study of the matter, and having in mind your military responsibility for the military security of this Territory, is it your opinion that the public safety requires the modified form of martial rule which exists here, and in particular provost courts for the military offenses which were declared in your General Orders, and in particular again the offense of an attack on a sentry, [704] which is here involved?

A. Ever since my incumbency as Military Governor, I have given the most careful study to the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

possibility of eliminating this modified form of martial law and the provost courts. I did that for a number of reasons. First, I wanted to carry out, if I could, the directive of the President, which expressed the thought and idea when he approved the proclamation that gradually there would be a return to civilian control of the civilian functions. Secondly, I wanted to do it, if I could, for the reason that I have many other duties besides looking after some of the civilian population. And also because fundamentally I believe that it is right, that it should be, if possible, in the hands of the civilians.

I am an American. I think I understand American tradition, American law. And I would be the first to get up and say, the time has now come to renounce this form of modified martial law, if I conscientiously could do it. But I do not feel that I can conscientiously do it and carry out my mission, which has been assigned to me for the security of these islands. I feel that I must have that control that is necessary to insure the safety and security of Hawaii, which involves the safety and security of the fleet, upon which the fate of this Nation depends.

Q. One last point I'd like to clear up, General. Despite the increase in the United States fleet, and any increased protection we may have here against an attack by the Japanese, [705] is it your testimony that carrier-borne Japanese planes could get

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

over these islands despite all protective measures we might take?

A. Absolutely. We have taken the utmost precautions for their detection, but they are not infallible and they have very definite limitations. Witness, for example, the marvelous protection that Germany has. Yet, despite that, the English and the Americans penetrate into German territory, and vice versa, the Germans into England. It seems to me, if I may add, that the primary consideration in viewing any of these matters is the prosecution of the war without interruption to a successful termination. And that every act of the Military Commander should be viewed whether it forwards that objects or is hindering its accomplishment. I say, and give it as my judgment, that if we remove from the authority of the Military Commander the power which is given to him under this modified form of martial law, we hinder the successful accomplishment of the war.

Mr. Ennis: That's all of redirect. Any further recross?

Mr. Anthony: No. That is all.

Mr. Ennis: Thank you.

(Witness excused.)

Mr. Ennis: Admiral Nimitz, will you take the witness stand, please? [706]

ADMIRAL CHESTER W. NIMITZ, U. S. Navy, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Admiral Nimitz, will you state your full name and your present official position?

A. Chester W. Nimitz, Commander-in-Chief Pacific fleet and Pacific Ocean areas.

Q. Now, Admiral Nimitz, your affidavit annexed to the return and answer in this case, sworn to on March 24, 1944—I will just state this to shorten up the qualifications—states that you were graduated in the Naval Academy in 1905 and have been in the U. S. Navy since, occupying different positions both at sea and in the Navy Department.

A. That is correct.

Mr. Ennis: Do you admit the qualifications as they appear in the affidavit?

Mr. Anthony: Yes, we admit that.

Mr. Ennis: We'll admit that, then. Admiral, will you state in a general way, then, what your duties as Commander-in-Chief of the Pacific area are?

A. To prosecute the war in the Pacific Ocean areas in accordance with general directives from the Joint Chiefs of Staff. [707]

Q. And in the discharge of those duties, have you made yourself familiar with enemy actions in the central Pacific area?

A. To the best of my ability, yes.

(Testimony of Admiral Chester W. Nimitz.)

Q. Will you state, Admiral Nimitz, in a general way the strategic position of this Territory as part of your general command?

A. The Hawaiian area constitutes the only base for the Navy that we have in the Pacific Ocean at the present time. It has the greatest importance to the fleet and to the Army for operations to the westward. Anything that is injurious to this area is prejudicial to our conduct of the war.

Q. Do you believe, Admiral Nimitz, as a military matter or as a naval matter, that the Japanese enemy might or could attack these islands?

A. Yes, they could. It is still within their capability to make carrier attacks behind the front, in spite of the daily searches that we make. We have never ceased, since December 7th, to search the areas from which we think those attacks are likely to come. Until the last Japanese carrier is destroyed, that capability will exist.

Q. Admiral Nimitz, will you turn and examine the map which is on the easel here in Court. Was this map of the Pacific Ocean prepared in your headquarters? A. Yes, it was.

Q. Will you state from the map and from the legend which [708] you hold in your hand, which describes the meaning of the red and blue circles around the islands, the method in which an attack by the Japanese forces might occur?

A. First of all, I will describe the area which it is possible for us to cover by search; from areas which we control, this line here. (Indicating on map.)

(Testimony of Admiral Chester W. Nimitz.)

Q. The outer blue line?

A. The outer blue line gives the area which we can cover by aircraft search from bases in the continent of the United States and in the Aleutians. This inner blue line around the Hawaiian chain that goes up as far as Midway is the area in which it is possible for us to cover by search from bases in the Hawaiian chain.

Q. That is air search?

A. Air search. This wide red line here represents the area or the line of position from which Japanese aircraft can launch an attack on objectives. This one here on Midway, this one, French Frigate Shoals, and from here on the Hawaiian area——

Q. That's the red line around all of the Hawaiian Islands?

A. The red line around all of the Hawaiian Islands. These small circles around Midway, around French Frigate Shoals, and around the chain from Kauai to Hawaii represent the line from which submarines can launch planes to attack or reconnoiter the Hawaiian Islands. These lines here with arrows indicate [709] the directions from which carrier attacks may approach the islands.

Q. And those lines run between to some extent the areas of search by plane?

A. Yes. If the Japanese wish to recover their aircraft, they must come within this inner red line here. If they are willing to make an all-out attack

(Testimony of Admiral Chester W. Nimitz.)

and not attempt to recover their aircraft, they can attack from the line out here.

Q. That faint outer red line? A. Yes.

Q. And this map and this legend were prepared at your headquarters?

A. Prepared in my headquarters.

Mr. Ennis: I offer the map and the legend explaining the circles in evidence. Any objection?

Mr. Anthony: No objection.

The Court: Received in evidence as Exhibit 12.

(Respondent's Exhibit 12 was received in evidence.)

H.C.#298
Resp.Exhibit #12
Admitted 4-11-44

PACIFIC OCEAN

Compiled from the latest information to 1938

BERING SEA
ALASKA
KAMCHATKA
SEA OF OKHOTSK
JAPAN SEA
HONSHU
HOKKAIDO
UNITED STATES
MEXICO
GULF OF MEXICO
AUSTRALIA
CORAL SEA
TASMAN SEA
NEW ZEALAND
COLOMBIA
ECUADOR
PERU

(Testimony of Admiral Chester W. Nimitz.)

By Mr. Ennis:

Q. Admiral Nimitz, in addition to the possibility of an attack by carrier-based planes, are there other military factors, major factors to be considered in determining the possibility of an attack by the Japanese on this Territory?

A. Yes. The Japanese can land commando raiders, espionage parties, in spite of any reasonable preventive efforts that we make. And the information that they might [710] possibly obtain would be in, my opinion, could be more injurious to our cause than if they came to these islands and established a beachhead on one of them. The information that they might obtain as to prospective movements of our fleet, the presence of our fleet in these waters, or its absence, the deductions that might be made from the information they pick up mingling with the Japanese of the community might very well cause some of our operations in the far west, far westward of here, to be unsuccessful.

Q. Well, in other words, do you agree with General Richardson's testimony that protection of these Naval operations to the westward from premature disclosure is a vital factor in your operations?

A. It is of the utmost importance, and the security against espionage activity in these islands is of the utmost importance.

Q. Admiral Nimitz, having in mind your duties here and your responsibility, and from your study of the situation, would you state whether or not,

(Testimony of Admiral Chester W. Nimitz.)

in your opinion, there is imminent danger of invasion of the Territory of Hawaii by the Japanese?

A. Invasion by sea-borne troops in sufficient numbers to seize a bridgehead, no. I consider it neither imminent nor probable. But invasion by stealth, by submarine, commando raids, espionage parties, I consider it not only probable but imminent. It is constantly impending. [711]

Q. And what is your view on invasion by carrier-borne aircraft?

A. I cited that in a previous answer, that it is possible, if the Japanese wish to take the risk; they have sufficient carriers and sufficient planes to make an attack on these islands similar to the one that they made on December 7th.

Mr. Ennis: You may cross examine.

Mr. Anthony: No questions.

Mr. Ennis: That is all, Admiral Nimitz.

(Witness excused.)

Mr. Ennis: May I have a recess to confer with Counsel, your Honor?

The Court: Yes. We will take a recess.

(A recess was taken at 11:17 a.m.) [712]

After Recess
(11:40 a.m.)

Mr. Anthony: Your Honor, I'd like to call Mr. Murakami, one of the witnesses for the Respondent, for further cross-examination. Is Mr. Murakami in the Courtroom?

ROBERT K. MURAKAMI

a witness in behalf of the Respondent, having previously been sworn, resumed and testified as follows:

Cross-Examination

By Mr. Anthony:

Q. You have already been sworn, have you not?

A. Yes, I have.

Q. Will you state briefly to the Court the difficulties involved in the expatriation of dual citizens of Japanese ancestry?

A. The difficulty is in the fact that a great many of the persons of Japanese ancestry born in the Territory of Hawaii were not registered with the Board of Health and consequently could not get their birth certificates, or they did not have the Hawaiian birth certificates already obtained to prove their American citizenship in order to take the steps to expatriate. So that was one of the obstacles or one of the difficulties which first had to be overcome. And when they did not have these certificates, those of us who were helping them had to let them get the birth certificates first and then, of course, the next step was to get what is called the copy of the family record in Japan.

(Testimony of Robert K. Murakami.)

Q. Where would they get that from? [713]

A. That would have to be gotten from the village office in Japan from which the parents of the individual came from.

Q. When, after you got that back from Japan, what would be done with that record?

A. That record, together with the report of expatriation, and also together with the copy of the birth certificate, would have to filed with the Japanese Consul.

Q. You are talking about cases in which the person is not even registered with the Consul, is that right, prior to 1924?

A. Well, in the case where the person was not registered with the Japanese Consulate, there is the additional or there is another step prior to that. That is to say, the report of the birth of the child had to be made through the Japanese Consulate first. And then——

Q. Even though the child's name was not on the Consul books, is that right? A. That is true.

Q. Then what would happen?

A. Then we would take the steps to file a report of expatriation, together with a copy of the family record and birth certificate.

Q. Were there any individuals that had no mother or father or no grandfather or grandmother? A. There were.

Q. How would they get some kind of a document to file with the Consulate? [714]

A. In such event the child had to be—a report

(Testimony of Robert K. Murakami.)

of the child establishing a home would have to be made in Japan through the Japanese Consul here. In other words, the child would establish a new home or a new family.

Q. In other words, he'd have to build himself into a new family tree, is that right?

A. That is true.

Q. And once he did that he'd get a record of that new family tree, bring that back here to file with the Consul, is that right?

A. Yes, a copy of that family record.

Q. That would get him on the books of the Consul? A. Yes.

Q. Then, from there on, you'd start your expatriation? A. That is true.

Q. How long would that take?

A. Of course, in that extreme case that you last referred to it might take six months or a year.

Q. Was there any resistance on the part of the Japanese of this Territory to going through the process of expatriation?

A. Yes, to some extent.

Q. What was the basis of their objection to expatriation?

A. The biggest objection they had was an argument along this line: Well, I don't want to take any step which would be construed as a recognition of any Japanese claim on me; and by expatriating or taking steps to expatriate, I would be admitting [715] that the Japanese Government has some claim on me. And I don't want to do that.

(Testimony of Robert K. Murakami.)

Mr. Anthony: That's all.

Mr. Ennis: No further examination.

(Witness excused.)

Mr. Anthony: Is Doctor Sakamaki in the Courtroom?

SHUNZO SAKAMAKI,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct-Examination

Mr. Anthony: If the Court please, I would like to have considered in evidence this book which I have before me, for your Honor, entitled "A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties," edited by Richard W. Flournoy, Jr., Assistant Solicitor, Department of State, and Manley O. Hudson, Bemis Professor of International Law, Harvard Law School; Oxford University Press, 1929. I might state for the Court's benefit that Manley O. Hudson, for at least 20 years to my knowledge, has been a professor of the Harvard Law School in the Chair of International Law. There is a chapter in here that relates to Japanese expatriation and dual citizenship. The book is not mine but I would like to have it considered in evidence if the Court will so rule. Counsel has no objection to it.

Mr. Ennis: That is correct.

(Testimony of Shunzo Sakamaki.)

Mr. Anthony: I will make it available to the Court. [716]

The Court: What is it you want to point out other than that mentioned that is contained in the book?

Mr. Anthony: Well, the problems that are involved in expatriation.

The Court: Only relating to Japanese?

Mr. Anthony: Well, if the Court is interested, the same problem applies to the Germans and Italians, French; indeed, the same problem exists in all countries that follow the civil law as distinguished from our law.

The Court: At what page is it?

Mr. Anthony: I will call those particular pages to your Honor's attention at a later time, unless you care to have me do it now.

The Court: I'm not awfully interested in the whole topic there.

Mr. Anthony: Well, I didn't think it had any relevance, your Honor, but the other side has seen fit to introduce evidence along that line, and I wanted to complete the record.

The Court: Well, that's all right. It may be received in evidence.

The Clerk: Petitioner's Exhibit "O".

The Clerk: Exhibit "O".

Petitioner's Exhibit "O" was received in evidence)

(Testimony of Shunzo Sakamaki.)

The Court: What do you call the book?

Mr. Anthony: Nationality laws. [717]

By Mr. Anthony:

Q. Will you give your name to the reporter?

A. S h u n z o S a k a m a k i, S-h-u-n-z-o S-a-k-a-m-a-k-i.

Q. Dr. Sakamaki, what is your present employment?

A. I'm an Assistant Professor of History at the University of Hawaii.

Q. Were you born in the Territory of Hawaii?

A. Yes, sir.

Q. Where were you educated?

A. I was educated in the public schools of Hawaii, and I got my Bachelor's degree and my Master's degree from the University of Hawaii, and my Ph. D. from Columbia University in New York.

Q. What do you do as to the Doctor's degree?

A. My Doctor's work was in history.

Q. How long have you been a professor at the University, assistant professor at the University?

A. At the University of Hawaii since February, 1936.

Q. And you are at the present time?

A. Yes, sir.

Q. Do you know whether or not you are or were a dual citizen, Doctor?

A. I was a dual citizen, because any person born before December 1, 1924, automatically was a dual citizen in that Japan claimed him as a Japanese subject; whereas the U. S. Government

(Testimony of Shunzo Sakamaki.)

also claimed him as a citizen because he was born here. And I was in that status until 1925 when I was expatriated from Japan. [718]

Q. You went through the necessary red tape to get off the books, is that right?

A. Yes, sir.

Q. Doctor, prior to the war were you a member of the committee that had anything to do with the expatriation of Japanese of this Territory?

A. I was a member of a committee that sponsored a campaign in November, 1940, to secure signatures to a petition that we addressed to the Secretary of State, Cordell Hull, asking him to use his good offices to negotiate with the Japanese Government for a simpler procedure of expatriation from Japanese nationality.

Q. It is a fact, is it not, that that procedure was at times very complicated?

A. It is extremely cumbersome, sir.

Q. Was there any objection to the going through with the formality of expatriation such as Mr. Murakami has referred to?

A. Yes, a considerable number of young people felt that they were American citizens because they were born here and were legally American citizens, and they did not wish to acknowledge any claim of any foreign government upon them, and applying to that foreign government for expatriation seemed to them to be an acknowledgment of the claim of that government upon them, and they did not wish to admit any such claim.

(Testimony of Shunzo Sakamaki.)

Q. Some of them resented it, did they not?

A. Oh, yes, very strongly.

Q. Will you tell the Court what your committee did and [719] how many names you got to this petition to the Secretary of State?

A. Your Honor, we had a campaign in November, 1940, to secure signatures of American citizens of Japanese ancestry of 16 years of age and over. We started a campaign on November 7th and ended it on November 30th. And we got approximately 30,500 signatures to that petition.

Q. I hand you two sheets of paper and ask you if this is the petition to which you refer, a copy of the petition? (Handing witness two sheets of paper.) A. That is sir.

Mr. Anthony: We offer the copy of the petition in evidence, if the Court please.

Mr. Ennis: No objection.

The Court: Received as Exhibit "P".

(Petitioner's Exhibit "P" was received in evidence.)

PETITIONER'S EXHIBIT P

(Copy of Petition)

November 30, 1940.

Honorable Cordell Hull,
Secretary of State,
Washington, D. C.

Dear Mr. Secretary:

We, the undersigned, are American citizens of

(Testimony of Shunzo Sakamaki.)

Japanese ancestry, born under the United States flag. By virtue of our birth on American soil we are American citizens, according to the laws of these United States. At the same time, according to the citizenship laws of Japan, we were born Japanese citizens because our parents were subjects of Japan. We were thus born with a dual citizenship status, owing to the operation of two types of citizenship laws.

We have grown up as Americans in mind and spirit with loyal devotion in our hearts to this land of our birth. Many of us, indeed, were unaware that we were claimed as citizens by another government, being in this respect like other Americans who, quite unknown to many of them, are likewise claimed by the nation of their foreign-born parents.

By action of the Government of Japan in 1924, a procedure of expatriation from Japanese citizenship has been provided, and a substantial number have been duly expatriated. We wish to call to your attention, however, that the expatriation procedure is complicated and cumbersome, entailing involved correspondence and long waiting. In many individual cases the technical difficulties are appalling, and in numerous instances more than a year elapses before the action is at long last completed. Some of the older members of our group have found it well-nigh impossible to secure the witnesses required for the issuance or validation of birth certificates, without which expatriation applications

(Testimony of Shunzo Sakamaki.)

cannot be filed, so that no matter how much they may desire to be expatriated from the Japanese nationality they cannot realize their wish. Many have been deterred from taking the necessary steps for expatriation because of the cumbersomeness and sheer difficulty of the procedure, or because they are unwilling to recognize a claim upon them by any government other than that of the United States.

As a result, an appreciable number of Americans of Japanese ancestry are still left in the undesirable status of dual citizens. This is a situation of personal distress and inconvenience to the individuals concerned, resulting in tension and misunderstanding and bringing upon the heads of us Americans of Japanese ancestry much undeserved and unwarranted suspicion on the part of some of our fellow citizens.

We realize just as clearly as any of our fellow Americans that it is of the utmost importance that the nation be united in loyal thought and action, particularly in times of emergency or crisis; and we regard ourselves as the equal of any of our fellow Americans in the sincerity and intensity of our allegiance to this land of our birth and the Stars and Stripes that symbolize our great nation.

Therefore, we respectfully address this petition to you, requesting that you exercise your good offices to the end that an arrangement be reached with the Government of Japan which will provide

(Testimony of Shunzo Sakamaki.)

a more simple procedure of expatriation from the Japanese nationality.

Respectfully yours,

Petition To The Secretary Of State
United States Of America

Signature Address

.....

.....

[Endorsed]: Filed 4-11-44.

By Mr. Anthony:

Q. After you completed your petition, what did you do with it, Doctor?

A. We had it bound and mailed to our delegate to Congress, Mr. King, who presented it to the Secretary of the Interior, Mr. Ickes, and Mr. Ickes presented it to the State Department.

Q. And that got to the State Department some time around November of 1941, did it not?

A. That's right.

Q. And that's the last you ever heard of it?

A. That's right, sir.

Q. Doctor, I hand you a mimeographed letter which is signed [720] by The Campaign Central Committee, and ask you if you recognize that? (Handing witness several sheets of papar)

A. I do, sir.

Q. Did your committee prepare that letter?

A. Yes, sir.

(Testimony of Shunzo Sakamaki.)

Q. And to whom was that letter sent?

A. It was sent to persons who helped us in the campaign, either financially or in soliciting of signatures.

Q. It was a short report on the doings of your committee, is that not right? A. Yes.

Q. I also hand you a mimeographed sheet of the treasurer's report. What is that report, the treasurer's report of the financial activity of this committee? (Handing witness several sheets of paper) A. Yes, sir.

Q. Was that mailed to all the members?

A. It was mailed to all.

Q. The supporters?

A. To all the supporters, yes, sir.

Mr. Anthony: We offer these two documents in evidence, if the Court please.

Mr. Ennis: No objection.

The Court: Received as Exhibit "Q".

(Petitioner's Exhibit "Q" was received in evidence.) [721]

PETITIONER'S EXHIBIT "Q"

TREASURER'S REPORT

DONATIONS RECEIVED FOR THE CAMPAIGN FUND

Hawaiian-Japanese Civic Association	$100.00
Tomoe Club	10.00
Japanese Central Institute Alumini Association	10.00
Niji-no-Kai	10.00
West Kauai Civic Association	25.00
T'Weeks Club	10.00
Nisei Kai	5.00

(Testimony of Shunzo Sakamaki.)

Torii Kai	5.00
Chikasaw Guild	25.00
Japanese Women's University Club	5.00
Waipahu YBA	10.00
Waipahu Shinyu Futaba Kai	5.00
United YBA of Kauai	10.00
Haleiwa YMA	5.00
Imua Club	10.00
Carps Club	5.00
Nenichi Kamuri, Ritz Clothiers	15.00
Wahiawa Japanese Civic Association	20.00
Edward N. Yamasaki, Melim Service & Supply Co.	5.00
Aiea Civic Club	10.00
Waialua Civic Association	20.00
Waialua YBA	5.00
Kawailoa Soto YBA	5.00
Haleiwa Meisho YBA	5.00
Mikkyo Seinen Kai	5.00
Japanese High School	10.00
University Japanese Club	10.00
Wakaba Kai	5.00
Shinyu Kai, YWCA	5.00
Ewa YMA	5.00
Hawaii Kyoiku Kai	25.00
Aiea YBA	5.00
Pearl City Civic Association	5.00
Roy Yuko Mijo	.25
Taro Makamine	.25
Sanji Abe, Hilo	10.00
Waianae YBA	5.00
Honouliuli Civic Association	5.00
Chippewa Club	5.00
Nansei Kai	5.00
Wahiawa YBA	5.00
Uruma Seinen Kai	5.00
Kahuku YBA	5.00
Jodoshu Fugoku Meisho Seinenkai	10.00
Shigeto Nakamura	1.00
Yeiso Yamaura	1.00
Junichi Teraoka	1.00
Kenzo Hamamoto	1.00
Fujito Higashi	1.00
Wallace Otsuka	1.00

(Testimony of Shunzo Sakamaki.)

Henry Y. Matsuki	1.00
Dr. N. Masunaga	1.00
Nobuo Fujitani	1.00
Nobuo Watamura	1.00
George Kamei	1.00
Masaru Shinseki	1.00
K. C. Yamasaki	2.00
Yutaka Ota	2.00
Charles S. Ishii	10.00
Y.W.B.A. of Hawaii	5.00
Order of Nahobi	10.00
Total received	$506.50

Donations received to date ..... $ 506.50

Disbursements

1. Administrative		
a. Postage	39.01	
b. Stationery	86.77	
c. Printing	51.50	
d. Office Help	83.33	
e. Telephone, radio, wireless	19.15	
f. Binding and forwarding petition	18.60	
2. Meeting arrangements		
a. Hall rental	12.00	
b. Refreshments	10.30	
3. Travel expenses		
a. Hawaii - Maui	43.90	
b. Molokai - Lanai	28.65	
c. Kauai	31.15	
d. Oahu, Rural	—	
e. Honolulu	—	
Total	$424.36	
Balance		$ 82.14

Respectfully submitted,
ARTHUR Y. AKINAKA,
Treasurer

(Testimony of Shunzo Sakamaki.)

June 17, 1941

Dear Friends:

Thanks to your cooperation and the help of many friends all over the Territory, our expatriation-petition campaign resulted in securing the amazing total of over 30,000 signatures. The petition has been duly accepted for consideration by Secretary of State Cordell Hull, to whom it was presented by Delegate Samuel Wilder King through Secretary of the Interior Harold L. Ickes.

Whether or not the State Department takes any action on our petition within the near future, one thing seems quite certain—that the text of the petition and the astounding total of signatures affixed thereto resulted in a distinct improvement of our position as Americans, in the estimation of our fellow-citizens. The warm endorsement of General Herron, Admiral Bloch, and others, as featured by the press definitely helped to reduce misunderstanding, suspicion, and fear. We trust, therefore, that you feel with us that the campaign was eminently worthwhile.

The list of those who helped to obtain signatures is very large, and we realize there are many others who helped whose names are not known to us. To every one who helped, we are most sincerely grateful, even if we may not reach all by a letter like this.

Appended herewith is a list of the donations which financed our campaign. To all the donors go our very grateful thanks. The total contributed

(Testimony of Shunzo Sakamaki.)

amounted to $506.50. Our expenses totalled $424.36. An itemized account of those expenses is available to anyone who desires it. A net balance of $82.14 was obtained.

A "hold-over committee," consisting of Miss Yuki Kimura, and Messrs. Shigeo Yoshida, Susumu Hashitate, Howard Kurio, and Uichi Kanayama, decided to buy with this surplus money 120 copies of "The American Citizens Handbook," a 366-page book published this year by the National Education Association of the United States, in Washington, D.C. The book retails for a dollar a copy (cheap at that price) but we obtained a 1/3 discount for ordering so many copies at once.

The 120 books have arrived from Washington, and before long we shall formally present them to the Territory of Hawaii as souvenirs of our memorable campaign and tokens of our desire to contribute to American education. We shall place a suitable inscription in each volume, and our plan is to have copies placed in all the public libraries and all the intermediate and senior high schools, and other such institutions throughout the islands. This will be a permanent and tangible contribution to the Territory from us all.

We expect to officially present the books to the Governor, or Acting Governor, asking him to accept our gift on behalf of the Territory. On that occasion, we hope that everyone who can be present will attend. —Please watch the newspapers for future details as to time and place.

(Testimony of Shunzo Sakamaki.)

Again, with thanks and Aloha, we beg to remain,

Yours very truly,

The Campaign Central Committee,

MASATOSHI KATAGIRI,
Chairman

SHUNZO SAKAMAKI,
Executive Secretary

ARTHUR Y. AKINAKA,
Treasurer

SHIGEO YOSHIDA

WILFRED C. TSUKIYAMA

KATSURO MIHO

[Endorsed]: Filed 4-11-44.

Q. Doctor, when you got through with your petition, did you have any money left over?

A. We had about $500 donated to meet the expenses of the campaign, and we had about $100 left over.

Q. What did you do with that?

A. A committee was appointed to look into the matter and it decided to purchase 120 copies, called "The American Citizen's Handbook," for distribution to various libraries in the Territory, all the high schools and intermediate schools' libraries and all the public libraries as a gift to the Territory.

Q. Is this a copy of that book? (Showing witness a book) A. That's right, sir.

(Testimony of Shunzo Sakamaki.)

Q. The rest of the fund was used in the purchase of these books? A. That's right.

Q. And they were presented to what?

A. They were presented to all the public libraries and all the high school and intermediate school libraries and the University of Hawaii library. The presentation was made to the Territory through Acting Governor Hite.

Mr. Anthony: No further questions.

Mr. Ennis: No Cross-examination.

Mr. Anthony: Thank you, Doctor.

(Witness excused)

Mr. Anthony: If the Court please, I'd like to offer in evidence a copy of General Orders No. 31, which through inadvertance [722] or otherwise was omitted from the orders which were attached to the return.

Mr. Ennis: If your Honor please, I don't see the relevancy of General Order 31 at this time. As Counsel and the Court knows the General Order was rescinded by General Order No. 38, and I object solely on the ground of relevency.

Mr. Anthony: Well, there's an affidavit on file by General Richardson to the effect that all of the General Orders, No. 1 to 53 were necessary for the prosecution of the war.

Mr. Ennis: Yes, I noticed that.

Mr. Anthony: I think to complete the record, we ought to have that in.

The Court: Received in evidence as Exhibit "R".

(Petitioner's Exhibit "R" was received in evidence.)

PETITIONER'S EXHIBIT R

Territory of Hawaii
Office of the Military Governor
Iolani Palace
Honolulu, T. H.

25 August 1943

General Orders
No. 31

HABEAS CORPUS PROCEEDINGS AND INTERFERENCE WITH MILITARY PERSONNEL IN PERFORMANCE OF MILITARY FUNCTIONS PHOHIBITED.

1. Purpose.

1.01. This General Orders is issued to eliminate, prevent, and prohibit interference with military personnel in the performance of their military functions or duties within the Territory of Hawaii, and to eliminate, prevent, and ~~pro~~hibit interference with military operations within the Territory of Hawaii, and thereby to further the defense and internal security of the Territory of Hawaii.

2. Habeas Corpus Proceedings Prohibited.

2.01. No clerk, deputy clerk, other officer, or employee of the District Court of the United States for the Territory of Hawaii, or of any court of the Territory of Hawaii, shall accept or receive for filing in such clerk's office, deposit for filing, or file, or allow, authorize, or permit to be deposited

for filing, or to be filed in such clerk's office, or with such clerk, any application or petition for a writ of habeas corpus, or make, issue, or execute any summons, citation, decree, order, or other process in any habeas corpus proceedings.

2.02. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall accept or receive for filing with, in, or before such judge or court, or in the office of the clerk of such court, or with such clerk, deposit for filing or file or allow, authorize, order, or permit to be filed with, in or before such judge or court, or in the office of such clerk or with such clerk, any application or petition for a writ of habeas corpus.

2.03. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall authorize, allow, decree, order, direct, or permit any habeas corpus proceedings to be commenced, maintained, or prosecuted before or by such judge or in or before the court in or over which such judge sits or presides; nor shall any such judge maintain, prosecute, hear, try, or determine in whole or in part, any habeas corpus proceedings or any phase of, or matter related to or in any way connected with, any habeas corpus proceedings.

2.04. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall issue any writ of habeas corpus,

order that any writ of habeas corpus issue or be issued, or authorize, direct, permit, or allow any writ of habeas corpus to issue, or be issued, from the court over which or in which such judge presides or sits, or from the office of the clerk of said court, or by the clerk of said court.

2.05. No person, either in his own behalf or as attorney, agent, or in any way for or on behalf of another person, shall present to, file or attempt to file, or deposit for filing, any application or petition for a writ of habeas corpus, to or with the clerk, deputy clerk, a judge, other officer, or employee of the District Court of the United States for the Territory of Hawaii, or of any court of or within the Territory of Hawaii; nor shall any person either in his own behalf or as attorney, agent, or in any way for or on behalf of another person, commence, maintain, or prosecute any habeas corpus proceedings in or before the District Court of the United States for the Territory of Hawaii or in or before any other court of or within the Territory of Hawaii.

2.06. Neither the United States Marshal for the Territory of Hawaii, any deputy or employee of such marshal, or any other officer or employee of the District Court of the United States for the Territory of Hawaii, or of any other court of or within the Territory of Hawaii shall accept or receive for service an application or petition for a writ of habeas corpus or copy thereof, or any writ of habeas corpus, any summons, citation, order, de-

cree, warrant, or process of any kind in a habeas corpus proceedings; nor shall the United States Marshal for the Territory of Hawaii, any deputy of such marshal, or any other officer or employee of the District Court of the United States for the Territory of Hawaii, or any officer or employee of any court of or within the Territory of Hawaii, serve or attempt to serve any application or petition for a writ of habeas corpus or copy thereof, or any writ of habeas corpus, or any summons, citation, mandate, decree, order, warrant, or process of any kind in a habeas corpus proceedings or issued or arising out of any matter or proceeding related to or in any way connected with a habeas corpus proceedings.

2.07. Any judge of the District Court of the United States for the Territory of Hawaii, or of any other court of or within the Territory of Hawaii, before whom a habeas corpus proceedings now is pending, shall forthwith discontinue such habeas corpus proceedings, and shall not maintain or prosecute, or allow, permit, or authorize to be maintained or prosecuted before such judge or the court in which such judge sits or presides, such habeas corpus proceedings an further, and hereafter shall not hear, try, or determine said habeas corpus proceedings or any phase of or matter related to or in any way connected with or arising out of such habeas corpus proceedings; nor, except as authorized in paragraphs 2.08 and 2.09 herein, shall any such judge hereafter issue any order, decree, mandate, summons, citation,

warrant, or process of any kind in any such pending habeas corpus proceedings, or in any matter, action, or proceedings arising out of, related to, or in any way connected with any pending habeas corpus proceedings; and such judge forthwith shall withdraw, revoke, and rescind any order, decree, mandate, summons, citation, warrant, or process of any kind, remaining unexecuted in any pending habeas corpus proceedings or in any matter, action, or proceedings arising out of, related to, or in any way connected with any pending habeas corpus proceedings.

2.08. Neither the Honorable Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, nor any other judge of the said District Court of the United States in and for the Territory of Hawaii, shall make or issue, or order, direct, or cause to be made or issued, any process, mandate, summons, citation, order, decree, decision, determination, direction, or action in or relative to, or arising out of, by reason or because of, that certain habeas corpus proceedings now pending in the District Court of the United States in and for the Territory of Hawaii substantially styled or entitled as follows: "In the Matter of the Application of Walter Glockner," and bearing file or identification number or mark "H. C. 295," in the office of the Clerk of the District Court of the United States in and for the Territory of Hawaii. The said Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, forthwith and immediately shall stay, refrain from, cause to be

stayed, and desist from, all pending or further action or proceedings in said habeas corpus proceedings, or in any matter, action, or proceedings arising out of, related to, or in any way connected with, such pending habeas corpus proceedings.

2.09. Neither the Honorable Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, nor any other judge of the said District Court of the United States in and for the Territory of Hawaii, shall make or issue, or order, direct, or cause to be made or issued, any process, citation, order, decree, decision, determination, direction, or action in or relative to, or arising out of, by reason or because of, that certain habeas corpus proceedings now pending in the District Court of the United States in and for the Territory of Hawaii substantially styled or entitled as follows: "In the Matter of the Application of Erwin R. Seifert, "and bearing file or identification number or mark "H. C. 296," in the office of the Clerk of the District Court of the United States in and for the Territory of Hawaii. The said Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, forthwith and immediately shall stay, refrain from, cause to be stayed, and desist from, all pending or further action or proceedings in said habeas corpus proceedings, or in any matter, action, or proceedings arising out of, related to, or in any way connected with, such pending habeas corpus proceedings.

3. Interference with Military Personnel Prohibited.

3.01. No judge of the District Court of the United States for the Territory of Hawaii, or of any court of the Territory of Hawaii, no United States Marshal for the Territory of Hawaii or his deputy, nor other public officer, deputy of such public officer, public employee, or any other person, shall, for any cause, whether or not such cause is deemed lawful cause by such judge, or other public officer, public employee, or any other person, in any manner, way, or form impede, oppose, or interfere with The Commanding General, United States Army Forces, Central Pacific Area, or with any other member of the armed forces of the United States, in his performance of his military functions, military duties, or military orders, or in his performance of any orders heretofore or hereafter issued by the Military Governor of the Territory of Hawaii regardless of whether or not such order or orders are published in the newspapers of the Territory of Hawaii; provided, however, that nothing contained in this paragraph shall be construed or deemed to prohibit municipal police officers from arresting members of the armed forces for traffic offenses triable by the Provost Courts.

4. Provisions of this General Orders to be Liberally Construed.

4.01. Except where otherwise clearly indicated, in addition to being applicable to habeas corpus proceedings hereafter commenced, the provisions of this General Orders shall be applicable to habeas

corpus proceedings heretofore commenced and now pending in the District Court of the United States for the Territory of Hawaii or in any other court of the Territory of Hawaii. The provisions of this General Orders shall be liberally construed so that the purposes for which this General Orders is issued, set forth in Paragraph 1.01, may be fully effected and accomplished.

5. Penalties.

5.01. Any judge of the District Court of the United States in and for the Territory of Hawaii, any United States Marshal or Deputy United States Marshal in and for the Territory of Hawaii, or any other public officer, deputy of such other public officer, public employee, or any other person, who directly or indirectly, expressly or impliedly, in any manner, shape, or form, shall violate, attempt to violate, evade, or attempt to evade, or aid, assist, or abet, in any violation of, any provision of this General Orders, upon conviction thereof by a Provost Court heretofore or hereafter appointed by the Military Governor of the Territory of Hawaii, shall be punished by confinement, with or without hard labor, for a period not to exceed five (5) years, or by a fine not to exceed five thousand dollars ($5,000.00), or by both such confinement and fine, or if convicted thereof by a Military Commission heretofore or hereafter appointed by the Military Governor of the Territory of Hawaii shall be punished as such Military Commission shall determine.

6. Issuance of this General Orders is Necessary

Exercise of Martial Law Powers of Military Commander in This Theater of War.

6.01. This General Orders is issued by the undersigned as Military Governor of the Territory or Hawaii and as the Military Commander of the military forces of the United States in this theater of war in which martial law duly has been established and exists. This General Orders is a necessary exercise of the martial law powers of the undersigned as Military Commander of the military forces of the United States in this theater of war.

S/ ROBERT C. RICHARDSON, JR.
Robert C. Richardson, Jr.
Lieutenant General, United States Army
Commanding General, United States Army Forces, Central Pacific Area
Military Governor of the Territory of Hawaii

A True Copy:

WM. R. C. MORRISON
Wm. R. C. Morrison
Colonel, J. A. G. D.
Executive

[Endorsed]: Filed 4-11-44.

Mr. Ennis: May I offer in evidence a copy of General Order No. 38?

The Court: Yes.

Mr. Ennis: I haven't it here at the moment, but with permission I will have it marked with the Clerk as the next in number.

The Court: Yes. That will be Exhibit 13.

(Respondent's Exhibit "No. 13" was received in evidence).

RESPONDENT'S EXHIBIT 13

Territory of Hawaii
Office of the Military Governor
Iolani Palace
Honolulu, T. H.

14 October 1943

General Orders
No. 38

RESCISSION OF GENERAL ORDERS

1. Rescission of General Orders No. 31, this Office, 25 August 1943.

1.01. General Orders No. 31, this office, 25 August 1943, hereby is rescinded.

By order of the Military Governor of the Territory of Hawaii:

/s/ WM. R. C. MORRISON
Wm. R. C. Morrison
Colonel, J. A. G. D.
Executive

A True Copy:

ROBERT B. GRIFFITH
Robert B. Griffith
Major, Infantry

[Endorsed]: Filed 4-11-44.

Mr. Anthony: We would also like to offer in evidence, if the Court please, a pamphlet which describes the activity of the VVV's. Your Honor will recall that immediately upon the outbreak of war, and it is shown by the record in this case, the Hawaiian [723] Territorial Guard was called into active service, and for a considerable period of time this Guard guarded installations in and about this Territory. And in January they were inactivated. Thereafter, the University members of that organization volunteered for duty with the Armed Forces, and this is the story of their volunteering and also the letter of General Emmons in regard to their activity.

Mr. Ennis: No objection.

The Court: Received as Exhibit "S".

(Petitioner's Exhibit "S" was received in evidence.)

PETITIONER'S EXHIBIT S

THE VOLUNTEER

[Printer's Note: Only the text of the pamphlet following is reproduced, the pictures and captions under the pictures being omitted.]

The Editor and His Staff Present

THE VARSITY VICTORY VOLUNTEERS

"Determined to undertake any task assigned to them in the line of their duty and responsibility as American citizens, one hundred fifty young Hawaiian Born Japanese who had been immobilized

Petitioner's Exhibit S—(Continued)

from the territorial guard volunteered their services en bloc to army authorities the other day.

They were students from the University of Hawaii who had decided to "Do Something Practical" in demonstrating their undivided allegiance to the United States and their loyalty to their flag and the ideals for which it stands.

Many of them made great sacrifices in abandoning their plans for higher education but they considered that the call of their country was of vastly more importance than any selfish ambition or desire for personal advancement."

Editorial in Hawaiian Herald
February 28, 1942

PROLOGUE

"This is more than an incident for passing notice. It is an illustration of one of manifold ways in which Americans of Japanese ancestry can serve their country in time of emergency.

These times are, admittedly, difficult for Americans of Japanese parentage.

The remedy for their difficult situation is basically with these young Americans of Japanese ancestry themselves.

They must, first, realize the fact that the militaristic regime of Japan has forced this situation on them and on all Americans.

Second, they must accept the further fact that there is bound to exist, particularly among Americans who have had little to do with this "second

Petitioner's Exhibit S—(Continued)

generation" a degree of uncertainty as to their attitude in time of dire emergency.

Third, they must conduct themselves loyaly and with absolute regard for the spirit and the letter of our laws and regulations, bearing cheerfully the inconveniences to which they may be put.

Fourth—and this is highly important—they must do as this group of 155 young citizens has done—seek out and find a way to serve their country and their community in this emergency.

It is one thing to accept passively a difficult situation which irks and burdens and grieves you. It is another thing—a better and finer thing—to take the initiative in finding ways and means to be a definite usefulness—to be an active and not a passive citizen of our republic in wartime."

Editorial in Honolulu Star-Bulletin
February 25, 1942

HISTORY

The history of this organization dates back to that black and fateful Sunday of December 7, 1941. When the University of Hawaii ROTC was called out in the emergency that day and organized into the Hawaii Territorial Guard, many of the present members enlisted. For two months these boys fulfilled the responsibilities of guarding and protecting the vital utilities and installations of the territory through the crisis. Then, a bombshell burst on January 19, 1942 and all members of Japanese ancestry were inactivated from the services of the Guard with honorable discharges.

Petitioner's Exhibit S—(Continued)

This was indeed a terrible blow. These boys had served with loyal and ernest endeavor and with pride in being able to do their part for their country. Now, they had been told that their services were no longer needed.

After the first wave of bitter disappointment and frustration had passed, they realized that it was no time to sit passively and bemoan their grievous situation when, instead, they could actually be searching for other ways and means to serve their country; that in their country's darkest hour of need and danger, they must prove themselves useful in some other phase of the war effort.

One day during their period of ferment, a small group of those discharged from the HTG met with a few interested and sympathic civic leaders and in the ensuing discussions, the deep-seated desire of these boys to contribute their services to the war effort now augmented by another burning desire to demonstrate their Americanism to dispel all doubts of their loyalty and sincerity, were plainly manifested. The next question was, "What were they going to do about it?"

Yes, the boys decided to do something about it; to do something in terms of bold, concrete action no amount of words could ever prove equal. They decided to petition the military governor to explain their peculiar situation and to offer themselves unconditionally for whatever helpful service they could contribute toward the defense of their homeland and toward the winning of the war. Thus a petition

Petitioner's Exhibit S—(Continued)

was drawn up and plans for meeting and organization were formulated, all done with due notification to proper authorities.

There were clouds of doubt and suspicion that had to be cleared from ignorant and hysterical minds by strong, active deeds, not mere spoken words of loyalty and oaths of allegiance.

Therefore, a meeting was called to mobilize as many of the former Guardsmen as possible attending the University and those in town, and the petition, after much discussion and explanation of the critical position of the Japanese in Hawaii, was presented for their approval and acceptance. This petition, signed and presented to the military governor, Lt. General Delos C. Emmons, appears as follows:

Honolulu, T. H.
January 30, 1942

Lt. Gen. Delos C. Emmons
Commanding General, Hawaiian Department, U. S. A.
Fort Shafter, T. H.

Sir:

We, the undersigned, were members of the Hawaii Territorial Guard until its recent inactivation. We joined the Guard voluntarily with the hope that this was one way to serve our country in her time of need. Needless to say, we were deeply disappointed when we were told that our services in the Guard were no longer needed.

Hawaii is our home; the United States, our

Petitioner's Exhibit S—(Continued)

country. We know but one loyalty and that is to the Stars and Stripes. We wish to do our part as loyal Americans in every way possible and we hereby offer ourselves for whatever service you may see fit to use us.

Respectfully yours,

The general was very pleased with the gesture and accepted the boys as a labor corps under the Hawaiian Department Army Engineers, to be housed as a unit and to work in conjunction with the army engineers. Then followed a scant one day notice for preparation and mobilization in which they left their jobs and withdrew from classes to answer the call, and on the morning of February 25, 1942, a group of volunteers, calling themselves the "Varsity Victory Volunteers," assembled on the steps of Hawaii Hall, on the campus of the University of Hawaii, to be tendered with a simple aloha ceremony by civic leaders, college officials and former classmates of the University.

ORGANIZATION

The organization of the Varsity Volunteers is a unique, complicated, and pyramided integration of several bodies.

First, the organization is officially known as the Corps of Engineers Auxiliary, attached as a company to the 34th Combat Engineers Regiment; and therefore directly responsible to the U. S. Army Corps of Engineers. The pride of the organization is the splendid and ef-

Petitioner's Exhibit S—(Continued)

ficient Army Personnel. The Commanding Officers are Lt. Colonel William Sexton, 34th Combat Engineers Regiment, and Capt. Richard Lum, Corps of Engineers Auxiliary. Company Commander Capt. Lum is ably assisted by Executive Officer Lt. Thomas Kaulukukui and Master Sergeants George Aikau and William Jarrett.

Second, the men are employed under Federal Civil Service Regulations.

Third, the members are divided into twelve work gangs, each under the leadership of an elected foreman. These squad foremen are "lorded" over by Supervisor Ralph Yempuku and his assistant, Ted Tsukiyama. The foremen concern themselves chiefly with the supervision of the work projects and meet with the Army Personnel every Thursday evening to exchange ideas. Squad foremen are Richard Chinen, Junichi Buto, Richard Yamamoto, Unkei Uchima, Harry Tanaka, Masato Doi, Sukeyoshi Kushi, Chiyoki Ikeda, Masaichi Sagawa, Claude Takekawa, Robert Kadowaki, and Henry Oyasato.

Fourth, every first Monday of a month, a general meeting is called to order by Supervisor Ralph Yempuku. The minutes of the meetings are kept by the elected secretary, Katsumasa Tomita, and the Company Fund is in the custody of the able treasurer, Henry Oyasato.

Equality is the Keynote of this assembly and foremen, army personnel, laborers, debate, discuss, and disagree. All are priviledged to express their

Petitioner's Exhibit S—(Continued)

views, to make suggestions, and to initiate motions.

For the best interest and welfare of the members, two standing committees have been appointed by the Chairman. These are the Membership Committee, which interviews new members, and the Morale Committee. The last named committee is headed by Shiro Amioka. It promotes and sponsors such activities as monthly dances, conferences, and essay and oratorical contests. It also investigates complaints and suggests remedies. Other members of the committee are Edward Okazaki, Ted Tsukiyama, Katsumasa Tomita, Herbert Isonaga, Chiyoki Ikeda, Unkei Uchima, David Miura, Yutaka Nakahata, Daniel Betsui, and Takashi Shikuma.

PERSONNEL

ROSTER OF VVV MEMBERS

	Name	Home Address
1.	Akimoto, Tamotsu	925-D Robello Lane, Honolulu
2.	Amioka, Shiro	518-A Ahui St., Honolulu
3.	Amioka, Ted T.	2627 S. King St., Honolulu
4.	Aoki, Tsugio	Kona, Hawaii
5.	Asano, Fred N.	1820-G Waiola St., Honolulu
6.	Betsui, Daniel D.	Hanapepe, Kauai
7.	Buto, Junichi	844 Pumehana St., Honolulu
8.	Chinen, Jenhatsu	Honouliuli, Ewa, Oahu
9.	Chinen, Richard K.	1956 Kilauea Ave., Hilo, Hawaii
10.	Doi, Masato	Paauhau, Hawaii
11.	Doi, Wallace T.	Port Allen, Kauai
12.	Emura, Edward T.	Lahaina, Maui
13.	Fujioka, Shigeo	1560 Miller St., Honolulu
14.	Fujita, David	1358 Kam IV Road, Honolulu
15.	Fujita, Yasuhiro	529-C Malanai Place
16.	Fujitani, Atsushi	Kapaa, Kauai
17.	Furukawa, Sumu	810 Gulick Ave., Honolulu
18.	Goto, Walter R.	Box 33, Station C, Upper Oili Road, Honolulu

Petitioner's Exhibit S—(Continued)

Personnel—Roster of VVV Members—(Continued)

	Name	Home Address
19.	Hamaguchi, Akira	971-A Robello Lane, Honolulu
20.	Hamaishi, Clarence Y.	2147 Dole St., Honolulu
21.	Harunaga, Toshio	Box 171, Honokaa, Hawaii
22.	Hashimoto, Akira	2455 Huene St., Honolulu
23.	Hashizume, Shuichi	Lahaina, Maui
24.	Hayashi, Yoshimi	3383 Manoa Road, Honolulu
25.	Hedani, Takao	302 N. School St., Honolulu
26.	Higa, Warren T.	1730-B Olona Lane, Honolulu
27.	Higashino, Edwin T.	1145 15th Ave., Honolulu
28.	Himeda, Kikuji	1508-A River St., Honolulu
29.	Himoto, Teruo	Box 226, Waialua, Oahu
30.	Hirai, Seichi	Box 158, Lanai City, Lanai
31.	Hirano, Yoshiyuki	Lanai City, Lanai
32.	Hirono, Howard M.	Box 928, Wahiawa, Oahu
33.	Hirota, Jyun	4758-H Farmers Road, Honolulu
34.	Honda, Edwin H.	Wailuku, Maui
35.	Hoshijo, Anki	Hilo, Hawaii
36.	Iha, Edward S.	1214 N. School St., Honolulu
37.	Ikeda, Chiyoki	1402 Liliha St., Honolulu
38.	Ikehara, Minoru	Kalaheo, Kauai
39.	Ishihara, Stanley S.	1253 Hall St., Honolulu
40.	Ishii, Shigeru	634 Wajakamilo Road, Honolulu
41.	Isonaga, Herbert S.	Box 185, Koloa, Kauai
42.	Iwasa, Walter M.	Box 527, Wahiawa, Oahu
43.	Kadowaki, Robert N.	2025 Kealoha St., Honolulu
44.	Kagawa, Shoso	618 McNeill St., Honolulu
45.	Kajihara, Takashi	Lahaina, Maui
46.	Kashiwada, James T.	234 N. School St., Honolulu
47.	Kato, Hiroshi	3228 Waiana Ave., Honolulu
48.	Kawabata, Taketo	Captain Cook, Kona, Hawaii
49.	Kawabe, Toshiro	968-A Akepo Lane, Honolulu
50.	Kawate, Kenneth K.	Waimea, Kauai
51.	Kikawa, Robert S.	1223 15th Ave., Honolulu
52.	Kimura, Stanley T.	Box 171, Waipahu, Oahu
53.	Kitagawa, Isamu	Kahului, Maui
54.	Kobayashi, Roy T.	894 S. Queen St., Honolulu
55.	Kono, Kiyoshi	1246-A Aala Lane, Honolulu
56.	Kuniyoshi, Hideo	Box 154, Hilo, Hawaii
57.	Kushi, Sukeyoshi	Wailuku, Maui
58.	Makino, Hideo	925-B Coolidge St., Honolulu

Petitioner's Exhibit S—(Continued)

Personnel—Roster of VVV Members—(Continued)

Name	Home Address
59. Manabe, Benjamin M.	Lihue, Kauai
60. Matsumoto, Rancefford Y.	Hana, Maui
61. Matsunaga, Joseph J.	Box 756, Wahiawa, Oahu
62. Mayeda, Thomas	1724 9th Avenue, Honolulu
63. Mikami, Yoshiharu	3324 Campbell Ave., Honolulu
64. Minami, Hiroshi	Lawai, Kauai
65. Mita, Wilfred M.	Box 605, Wahiawa, Oahu
66. Miura, David M.	Box P, Kapaa, Kauai
67. Miyake, James S.	Port Allen, Kauai
68. Miyake, Walter S.	Port Allen, Kauai
69. Miyashiro, Yeiyu	Ookala, Hawaii
70. Morisako, Henry H.	534-A Holokahana Lane, Honolulu
71. Morisawa, Soji	920 Ahana Lane, Honolulu
72. Morita, Tom T.	Kapaa, Kauai
73. Murata, Robert S.	1608 McGrew Lane, Honolulu
74. Nagahisa, Henry S.	686 S. Hotel St., Honolulu
75. Nagaji, Grover K.	Box 387, Waipahu, Oahu
76. Nagao, Wallace T.	Halaula, Kohala, Hawaii
77. Nagasako, Melvyn M.	Lahaina, Maui
78. Nagata, Shogo	1103 Pinkham St., Honolulu
79. Nakagawa, Yoshio	711 Kunawai Lane, Honolulu
80. Nakahata, Yutaka	1014-2 Webb Lane, Honolulu
81. Nakama, Henry S.	2445 Ferdinand Ave., Honolulu
82. Nakamine, Roy K.	Makena, Maui
83. Nakamura, Allan I.	Holualoa, Kona, Hawaii
84. Nakamura, Edward H.	1349 10th Ave., Honolulu
85. Nakashima, Shigemitsu	1651 Alaneo Place, Honolulu
86. Namba, Ryoji	254 Moomuku Place, Honolulu
87. Narusaki, Mamoru	Kahaluu, Oahu
88. Nikaido, Thomas T.	964-D Robello Lane, Honolulu
89. Nishikawa, Akio	Paia, Maui
90. Nishimura, James S.	732 7th Ave., Honolulu
91. Nogawa, Raymond K.	57 Holt Lane, Honolulu
92. Nosaka, Seichi	1728 Kam IV Road, Honolulu
93. Oka, George K.	1353 Davis Lane, Honolulu
94. Oka, James I.	Waialua, Oahu
95. Okazaki, Edward Y.	Paia, Maui
96. Okubo, Yoshio	1266 Matlock Ave., Honolulu

Petitioner's Exhibit S—(Continued)

Personnel—Roster of VVV Members—(Continued)

	Name	Home Address
97.	Okubo, Yugo	1266 Matlock Ave., Honolulu
98.	Okuda, James T.	853 Coolidge St., Honolulu
99.	Okumoto, Walter T.	131 Koalele St., Honolulu
100.	Onaga, Mitsuru	Papaikou, Hawaii
101.	Ono, Masao	180 N. King St., Honolulu
102.	Ono, Morimasa	2564 Kam IV Road, Honolulu
103.	Ono, Seichi	Puunene, Maui
104.	Ono, Tamotsu	554 Waipa Lane, Honolulu
105.	Onodera, John T.	3518 McCorriston St., Honolulu
106.	Otani, Akira	2425 East Manoa Road, Honolulu
107.	Oyasato, Henry C.	Box 130, Koloa, Kauai
108.	Sagawa, Masaichi	Box 136, Hawi, Hawaii
109.	Saito, Herbert T.	231 Magelian Ave., Honolulu
110.	Sakamoto, Ronald Y.	Wahiawa, Oahu
111.	Saruwatari, Kenneth K.	1214 Auld Lane, Honolulu
112.	Sato, Harry N.	Lawai, Kauai
113.	Serikawa, Fumio	Kohuku, Oahu
114.	Shikuma, Takashi	899 Kilauea Ave., Hilo, Hawii
115.	Shintani, Thomas T.	1733 Ashford St., Honolulu
116.	Suzuki, Terry T.	964-B Robello Lane, Honolulu
117.	Takara, John H.	3443 Winam Avenue, Honolulu
118.	Takekawa, Claude Y.	1560 Kam IV Road, Honolulu
119.	Takemoto, Kaname	Kapaa, Kauai
120.	Takizawa, Garret T.	920 Cedar St., Honolulu
121.	Tanaka, Harry T.	1632 Aupuni St., Honolulu
122.	Terada, Herbert M.	1436-A Liliha St., Honolulu
123.	Tokuyama, George H.	153 N. Kuakini St., Honolulu
124.	Tomita, Hiroichi	Wailuku, Maui
125.	Tomita, Katsumasa	207 Ululani St., Hilo, Hawaii
126.	Tottori, Calvin A.	4429 Ahuawa Place, Honolulu
127.	Toyota, Ralph H.	1441 Liona Place, Honolulu
128.	Tsuji, Ernest Y.	1921 Kalai Road, Honolulu
129.	Tsukazaki, Norman T.	1123 1st Ave., Honolulu
130.	Tsukiyama, Ted T.	1042 17th Ave., Honolulu
131.	Uchima, Unkei	Lawai, Kauai
132.	Ueki, Wilfred O.	Box 652, Paia, Maui
133.	Urabe, Howard M.	Kapaa, Kauai
134.	Uyeda, Kenichi	711-C Middle St., Honolulu
135.	Uyeda, Kenso	557 Pokole St., Honolulu
136.	Uyehara, Harry K.	Box 289, Honokaa, Hawaii

Petitioner's Exhibit S—(Continued)

Personnel—Roster of VVV Members—(Continued)

Name	Home Address
137. Uyemura, Richard S.	Box 2725, Honolulu
138. Uyetake, Joso	Wailuku, Maui
139. Watanabe, Stanley	Wailuku, Maui
140. Watase, Edward K., Jr.	Port Allen, Kauai
141. Yabusaki, George H.	803 Kaaloa St., Honolulu
142. Yamada, Allen H.	Box 169, Koloa, Kauai
143. Yamada, Edward Y.	2157 Liliha St., Honolulu
144. Yamaguchi, Tokio	Waipahu, Oahu
145. Yamamoto, George K.	931 Robello Lane, Honolulu
146. Yamamoto, Joji	1326-B College Walk, Honolulu
147. Yamamoto, Richard S.	515 Malanai Place, Honolulu
148. Yamamoto, Satoki	Honokahua, Maui
149. Yanagi, Glenn	478 Pau Lane, Honolulu
150. Yasuda, Joseph K.	921-A Robello Lane, Honolulu
151. Yempuku, Ralph T.	809 Laula Way, Honolulu
152. Yokoyama, Kauame	Hanapepe, Kauai
153. Yoshimasu, Masato	Paia, Maui
154. Yoshimoto, Tsugio	971-B Robello Lane, Honolulu
155. Zakimi, Saiji	Hakalau, Hawaii
156. Zukemura, Richard H.	39-B Holt Lane, Honolulu

FORMER MEMBERS OF THE VVV

157. Chinen, Masahide	R.F.D. Box 24, Haiku, Maui
158. Fujitani, Yoshiaki	925 Kapaakea Lane, Honolulu
159. Honma, Tsuneo	National Park, Hawaii
160. Ikeda, Tadashi	c/o Waimea High School, Waimea, Kauai
161. Kimura, Kongo	c/o Pahoa School, Pahoa., Hawaii
162. Kogami, Toshiyuki	818 Dillingham Blvd., Honolulu
163. Komoto, Iro	1722 Liliha St., Honolulu
164. Komesu, Phillip	1367 Miller St., Honolulu
165. Miyasaka, George	229 Hali St., Honolulu
166. Kagihara, Allen	1726 Anapuni St., Honolulu
167. Taketa, Morris	1483 S. King St., Honolulu
168. Takemura, Tadashi	650 Laukapu St., Hilo, Hawaii
169. Yamaoka, Noboru	Hilo, Hawaii
Capt. Richard T. F. Lum	212 Koalele St., Honolulu
Lieut. Tommy Kaulukukui	1260-A Ekaha St., Honolulu
M/S William K. Jarrett	3350 Maunaloa Ave., Honolulu
M/S George F. Aikau	27 Maluniui Ave., Ceconu Grove, Kailuta, Oahu

Petitioner's Exhibit S—(Continued)

PERSONALITIES

Shiro Amioka, known to his mates as Cub, he was the toughest, the sweetest and the workingest little guy in the qaurry gang. Always a big hit with the girls, he was the pride and joy of Hale Laulima.

Tsugio Aoki: "Pablo" was the biggest liar of Victory Hall. His lies were so good, he believed them himself. Baby-faced and cheerful, he never shirked in his work. Working with him was always a joy.

Fred Asano, who lived on and for gambling. Living by the grace of Lady Luck, "Johnny" was in the height of estacy one day or in the depth of misery the next. His toothless smile was a thing of beauty.

Daniel Betsui, quiet and assuming. Never a flat note in his singing, Danny was the singingest guy in the VVV.

Richard Chinen, the bull of the kitchen. His menacing presence in the mess hall made even the worst GI beans taste decent. A swell guy in any man's opinion.

Wallace Doi, the problem child of Varsity Hall. Wally was the constant source of Ralph Yempuku's nightmares. He tried every trick to get out of work, but always never succeeded. His hobby was cleaning barracks.

Shuichi Hashizume: Hash was never a good poker player, but he was conscientious and charitable. He got drunk on one bottle of beer and always slept early.

Petitioner's Exhibit S—(Continued)

Takao Hedani, who wanted to be called Mike. But he wasn't the type. Hedani was always a good worker, a good eater, and a good griper.

Warren Higa: More fat than brawn, slower than an ox cart, he was aptly named "Blubber". He had a thundering voice, full of sound and phooey. He loved to mould himself into a chair, especially at work.

Edwin Honda, always a better worker than a talker. Eddie was full of good habits. He always bought a bond, was always up early, and always got sick.

Edward Iha, the unsung hero of the kitchen crew. He looked fat and sloppy but he worked hard just the same. Mike was always there to hand the boys an extra helping.

Herbert Isonaga, born and bred a gentleman. He got rough, he got drunk, but he was always a gentleman. The boys all liked him, the girls more.

Robert Kadowaki, who knew every corner and every girl at Hale Aloha. Wacky was the undisputed leader of the wolf pack that haunted Hale Aloha on Sundays. Too bad he wasn't as good a worker as a lover.

Sukeyoshi Kushi who lived with his golf clubs. Goosie golfed every afternoon but he could never keep his waistline down. He drove the boys nuts with his phonograph but they all liked him for his industriousness and cheerfulness. He never had a girl but he always talked about them.

Petitioner's Exhibit S—(Continued)

Joseph Matsunaga: Joe was all noise and no sense. His intentions were always better than his deeds. He loafed at every opportunity and worked only on his days off. Care free and humorous, he was nice to have around.

Roy Nakamine, the sleeping beauty of Victory Hall. He slept in the morning, he slept at work. He slept at noon. And he slept at night. He just slept.

Yoshio Okubo: "Rowdy" was never happy unless he was working or talking in his sleep. He hardly spoke a word at work and did his job cheerfully. But at night he was a terror. He cussed at everybody and sang, "Johnny Doughboy" all while sleeping.

Henry Oyasato, who had the thankless job of trying to keep busy in the office. He was always popular on Pay Day. Hank loved to worry and the boys' welfare came first with him. He was never grouchy and his hair was always in place.

Mitsuru Onaga: Poor David! His body outgrew his legs. He could never live down his shortness. Even Ralph called him Shorty. But David made up for the height he lacked with voluminous talking.

Kenneth Saruwatari, 170 pounds of belly and hot air. His favorite pastimes were bragging and playing poker, but he was never good at both. Saru could work when he wanted to, but he never wanted to. He was a good truck driver while he lasted, but he didn't last long. He loved to smoke, but he never carried his own cigarettes. Wherever he went,

Petitioner's Exhibit S—(Continued)

he never forgot to be himself—noisy, mischievous, bothersome, but nice.

Harry Tanaka, who took many baths but could never get the dirt off his face. "Nigger" was a paradox. He read the best books and he drank the worst liquor. He was the best orator and he used the vilest language at work. He was the hard-working foreman and an irresponsible rowdy. He was serious one moment corny the next. "Nigger" was just plain unpredictable.

Katsumasa Tomita, the paragon of goodness. Kats had his lighter moments but he was usually serious. He took his baking seriously. He took his reading seriously. And he took his girls seriously.

Unkei Uchima: "Five by five" Unkei was a mass of gentleness. Only on the football field did he utilize his massive physique. He was always ready with a kind word or a helping hand. Popular with his men, he worked the hardest and the longest.

Joso Uyetake, the tragicomic figure of Victory Hall. He made a sad picture trying so hard to make his hair behave. Jo tried everything from vitalis to axle grease to keep his hair down. He was always plugging.

Edward Watase, whose familiar sight as he limped off to sick call, was known to everybody. Funny how he used to get sick so conveniently. His lifelong ambition was to outbluff Wally Doi at poker. He did a good job of fooling Ralph though.

Ted Tsukiyama, whose New Year's resolution

Petitioner's Exhibit S—(Continued)

was to concentrate on one girl, but never quite succeeded. His wolfing expeditions were the talk of the camp. His chores were to talk about girls, talk to girls, and to be talked to about girls.

George Yamamoto, the human encyclopedia. He was so unobtrusive that no one realized how much he knew until he came out with some incredible knowledge. George was full of appropriate repartee and made a delightful companion.

Ralph Yempuku, who never scolded, never frowned, never said no and never overslept. Ralph's hobby was to get the boys out of bed. He loved big cigars like all other little guys.

SLUMMING WITH THE 3V's

"Ta-ta-ta-ta!" The clear call of the regimental bugler heralds the break of another day. At that instant the buzzer in the barracks jangles noisily that it is 6:15 AM and time to get up. Gradually the barracks come to life. Squeaking of beds, clatter of shoes and slippers, mumbling of voices and music from radios begin to be heard.

Going to the washroom, the familiar sight greets the eyes: people waiting in line—sometimes three deep—to reach the wash basins. Breakfast is served at 6:30. Really G. I. at that! Nowhere else can one taste such coffee and bacon except in the Army. Making up the bunks—the first chore of the day for each member—is undertaken. Sloppy bunks, neat bunks—all express the person's personality. As a whole the bunks are well made.

Petitioner's Exhibit S—(Continued)

The 7:30 assembly buzzer rings. People pour out from the three barracks, respectively named Varsity Hall, Victory Hall, and Volunteers Hall. Roll call is taken and whatever announcements there are to be made are given to the whole group at this time by Captain Richard Lum or Supervisor Ralph Yempuku. Work assignments are handed out and the group disperses to the various jobs—some to Kunia, others to the 3W road project, and others to the Engineer DP.

A shrill whistle announces that it is 11:45 and time to go back for lunch. The lunch buzzer rings precisely at 12 noon. What's on the menu today? The boys are so hungry they are ready to eat anything. Pork and beans—the Army's delicacy greets their eyes. The boys fall to with vigor. For the next 15 minutes or so, the silence is unbroken except by the clatter of plates, knives, and forks. Gradually conversation is heard. Somebody tells the latest rumor he has heard. The next person questions it or adds to it. A joke—laughter. The scene is like any gathering of healthy young boys enjoying life.

A truck takes lunch out to boys working on the road. Passing a steam roller on the road one receives a hearty smile from the operator. With that vacancy in his mouth he looks just like "Jack O'Lantern" Yasuda. He is James Nishimura who recently made a trip to the regimental dentist and was scared out of his wits when the lieutenant asked the captain how to pull his tooth. Passing

Petitioner's Exhibit S—(Continued)

a gang spreading rocks on the road one goes further and sees a group of boys here and another further on laying culverts and building headwalls. The lunch wagon is always a welcome sign for these boys.

Exactly 4:30—the boys come home. Half an hour until supper is served. Showers start going full blast; wash basins are overcrowded. Mailman Yoshiharu Mikami comes around with missives for the lucky ones. Again he shouts, "Kikuji Himeda. Letter for you!."

Yum! Yum; Chicken a la king for supper. The hungry boys fall to with eagerness and store away great quantities for food in a short period of time. The way the food is downed gladdens the heart of any good cook.

"Orchestra Wives" starring George Montgomery, Ann Rutherford, and Glenn Miller's band is playing at the Post Theatre 4 at 5:30. After finishing supper boys with gas masks can be seen hurrying to the show.

Other boys play basketball in the inter-barracks tournament. The passing and shooting combination of Claude Takekawa and Joe Okumoto of the Volunteers Hawks draws acclaim. Other boys play golf on the neighboring golf course. The drives and putting of Sukeyoshi Kushi, 1942 Maui champion, serve as models for golf enthusiasts like Grover Nagaji and Ted Tsukiyama. Taking a peek into the bar-bell room one may see Akira Hashimoto, Akio Nishikawa, and Ranceford Matsumoto building up their muscles.

Petitioner's Exhibit S—(Continued)

Twilight and gradually evening creeps on. Lights from unblacked out barracks go out one by one until no lights are seen after 7 PM. People crowd into the reading rooms—some to read magazines and books; others to play friendly games of poker. Quite a number of boys can be seen in Boomtown —an amusement center for the 34th Engineers— playing billiard, ping pong, and African golf. Cold drinks are served there every night.

As the short hand creeps around the clock, the squeaking of beds and finally only the soft breathing of sleepers can be heard. Another day has gone by and the VVV faces the morrow with anticipation —to do their best, come what may.

ACTIVITIES

The intent of the VVV being to produce for the winning of the war, the first concern of the group was the work that lay ahead. Starting with the building of prefabricated houses, its first major project, the group has laid by within a period of one year, the following record of achievements: Six warehouses, large and small, and a large repair shop built; several miles of barbed wire strung; tons of rock quarried; numerous cabinet shop articles such as chairs, desks, tables, lamps, blackboards, bulletin boards, mess hall articles, trophy cases, and recreational facilities produced and being produced; a road job completed, two new roads under construction; and odd jobs continually engaged in, such as barracks maintenance and gen-

Petitioner's Exhibit S—(Continued)

eral construction and repair. Under the latter head came such jobs as building a washing ramp, renovation Regimental Headquarters, the Regimental Supply Office and Officers' Quarters, building a reviewing stand and blacking out the Post Bowl. The above, though brief, represents forty-eight hours spent per week for a period of one year and constitutes the major activity of the VVV.

Foremost in popularity and participation among recreational activities was Sports. Sports in the VVV was divided into the following classes to encourage as much participation as possible by the group: Inter-Barracks competition; Intra-Regimental competition; Regimental teams and the VVV teams.

At the half-year celebration medals and trophies were awarded to VVV members for outstanding participation in sports. The Varsity Hall Tigers won the team championship. Hiroichi Tomita, Stanley Watanabe, and Seichi Ono received medals for individual competitive ability.

With the advent of the football season, the VVV organized two teams, one to enter the Citywide League 135 lb. barefoot league, and the other, unlimited in weight, to take all comers for the sheer love of the game. The two teams, both of them coached by Lt. Tommy Kaulukukui, gave a very good account of themselves, the 135 lb. team finishing with three wins against two losses, and the unlimited team breezing through its schedule unde-

Petitioner's Exhibit S—(Continued)

feated. Besides winning several minor skirmishes, the unlimited team laid away a record of a 12-6 win over the Governors of Farrington High School and a 13-0 victory over the Rough Riders of Roosevelt High—both members of the Honolulu Interscholastic Conference. The 135-lb. team went through its 1942 season in the following manner:

Sept. 19	Diamond Packers (a pre-season game)	12	VVV	0
Oct. 4	Waialae	6	VVV	7
Oct. 11	Moiliili	0	VVV	13
Oct. 24	Diamond Packers	13	VVV	0
Oct. 31	Sheridan A. C.	13	VVV	0
Nov. 15	Nalo O Maumau	0	VVV	21
Jan. 1	Chow Hounds (in the Pineapple Bowl)	0	VVV	27

Elated with the successful conclusion of a tough season which was topped by a brilliant victory over the Chow Hounds from the 47th Engineers in the opener of the New Year's doubleheader, and having been infested with spirit of competition, the VVV entered a team in the American Division of the Post Basketball League.

The VVV has thus far won five games and lost three.

Engineer Red Men	12	VVV	53
Signal Corps Hawkeyes	25	VVV	22
Engineer Volcanoes	18	VVV	43
Q. M. C. Aces	20	VVV	41
Ordnance Tarheels	18	VVV	39
Hq. Braintrusters	38	VVV	28
Brown Bombers	17	VVV	49
Infantry Wheelmen	29	VVV	27

Petitioner's Exhibit S—(Continued)

Overshadowed by sports, but none the less fully participated in and enjoyed, were social activities such as community sing, glee club, indoor games, movies, and dances which served to acquaint members with one another.

Monthly dances for VVV members and their guests were held on Sunday afternoons in Hemenway Hall on the campus of the University of Hawaii. These were informal dances to which residents of Hale Aloha and Hale Laulima—University women's dormitories—were invited. These affairs were planned and sponsored by the members to fill a need for social activities during the weekends.

Hale Laulima, in turn, staged several Saturday night socials to which VVV members were invited.

Life in the VVV was by no means confined to athletics and social activities. The members of the VVV being predominantly from the University, intellectual activities were shown a lot of interest. Coming first on the list of such activities were the extension courses which were offered the VVV members by the University of Hawaii. Four such courses were taken and completed. They were Postwar Worlds—a course in political science; Religion and Literature; Mathematics; and Physical Education.

Required by the Army were lectures and instruction on first aid and on gas warfare. These the VVV learned with keen interest. The lectures were delivered intermittently by members of the medical

Petitioner's Exhibit S—(Continued)

staff and dealt with fractures, hemorrhage, shock, and their treatment. The description and detection of poisonous gases were taught the VVV through lectures and movie film.

Other phases of activities were model airplane construction and the maintenance of a Victory garden.

Reminiscing during idle moments, VVV men will recall the many memorable experiences they have had during the past year in service. In their minds, members will experience anew their outstanding achievements. No one will find it difficult to place outstanding events in a cozy nook of his cranium to be brought out during his "pipe and chair" age.

The prick of a needle will doubtlessly flash back and bring recollections of the trips made to the blood bank. Three times during the past year, the VVV's made a call at the bank, each man giving from 350 to 500 cc. of precious blood each time. Some went to escape from work for the day and the meal that came after the operation, but the great majority went because they wanted to do their bit for a worthy cause.

While not outstanding, for everybody seems to be doing it, the VVV is nevertheless, proud of its bond parade. Every month, the members of the VVV sank a sizeable sum in war bonds ranging in denominations from $25 to $125. As of January, 1943, the VVV showed a record of $27,850 worth

Petitioner's Exhibit S—(Continued)

of bonds bought in a period of ten months beginning in April, 1942.

Serving on an entirely voluntary basis and without pay, Masato Doi and Tamotsu Ono acted as supervisors for the Junior Victory Brigade during a six-week period in the summer of 1942. The Brigade, composed of young boys between the ages of 12 and 15, was organized to aid in the war effort. With capable Doi and Ono at the helm, the Brigade had a successful campaign during the summer.

Harry Tanaka won the Annual Bernda Extemporaneous Speaking Contest on May 21 at the University of Hawaii speaking on the "Preservation of Free Speech." Tanaka also copped the VVV First Annual Oratorical Contest on July 16, speaking on "The Road Ahead" as being one "drenched with blood, sweat and tears." Grover Nagaji took second place in the open division. On the same night, Hiroshi Minami convinced the judges that he was the best orator in the novice division with his talk on "Physical Fitness for Victory." Trailing him were two fellow members of the Quarry Gang, Ryoji Namba and Richard Uyemura. The first place winners of both divisions received $25 war bonds as their prizes.

In the literary field, Masato Doi distinguished himself when he received honorable mention in the Charles Eugene Banks Literary Contest held at the University of Hawaii. Dai's entry was a letter entitled "Frankie."

Kenichi Uyeda ran off with the grand prize in

Petitioner's Exhibit S—(Continued)

the Slogan Contest held in May, 1942, by the Morale Committee. His winning slogan was: "Work up a sweat, and the Sun will set." Stanley Kimura's "Cleanliness leads to Healthiness" won for him a prize while Walter Iwasai's "Let not our efforts be in vain" was adjudged the best for general use.

When it came to celebrating occasions, the VVV's went all-out for a good time. The first big blow-up came on August 22, 1942, after six months of hard work when everyone took time off to celebrate the half-year anniversary of the organization with a big luau staged at the University of Hawaii amphitheater. Many distinguished guests were present that day representing the Army, University of Hawaii and the community. A dance on the following day at Hemenway Hall wound up the festivities for the occasion.

Luaus seem to be the Triple V's favorite way of celebrating, for another one headlined the Christmas feast in the mess hall. Through the generosity of George Higa, proprietor of the Honolulu Cafe, delectable Hawaiian dishes were enjoyed by the members and their guests. Christmas felt like the Christmas of old that night with appropriate decorations adorning the mess hall, carols ringing out from many voices, and the spirit of giving manifested through a grab-bag.

Petitioner's Exhibit S—(Continued)
LETTERS

I think something like this may do as a message to the VVV's on their first anniversary. It is not long, but it is heartfelt.

V.V.V.—The Most Honored Initials in Hawaii!

These initials stand for a way of meeting a serious crisis, and that way will redound to the credit of all Americans. The Varsity Victory Volunteers and their wholehearted effort represent more than a mere episode in our history; they represent the high quality of our civilization. Let the ringing words of praise by General Emmons stand for Hawaii's appreciation of these Americans.

With all good wishes,

Sincerely yours,

Signed: GREGG M. SINCLAIR
President (U. of H.)

To the Varsity Volunteers:

Much has happened since we met on the steps of Hawaii Hall and you began your service to our country as an organized unit. It was not the kind of service which you would have preferred to give, but it was service of a kind which you could give and it was needed. You have carried on through your first year with the same spirit of loyalty which was the basis for your offer to serve in whatever way the Commanding General could use your help. You have held fast to your ideals. You have made an outstanding record and have won the

Petitioner's Exhibit S—(Continued)

respect and admirations of many who were doubtful of the stand which you citizens of Japanese ancestry would take. You have fully justified the confidence of those of us who knew that you are as loyal as any other citizens of different racial descents. I am proud of what you have done.

To you all I send my congratulations and aloha!

Signed: C. R. HEMENWAY

January 23, 1943

Varsity Victory Volunteers
34th Engineers Regiment
A.P.O. 957

Gentlemen:

In the year that has passed, the VVV's have amply demonstrated their loyalty and devotion to their country and to their fellow Americans by their cheerful and enthusiastic performance of the duties entrusted to them. They are rendering a valuable and honorable service which is all the more difficult because it lacks the glamor and excitement of combat.

Because of the sacrifices made and the high spirit maintained in the performance of their every day tasks, the VVV's have made many friends and have provided a shining example for all of us. I know they will carry on with constantly improving efficiency and the same high morale until the war is won.

Good luck VVV's!

Sincerely yours,

Signed: L. A. HICKS

Petitioner's Exhibit S—(Continued)

January 30, 1943

To: All Members of the Varsity Victory Volunteers

Approximately a year ago I had the rare opportunity of becoming associated with you all in the capacity of being your Commanding Officer. With this assignment, came the responsibility of your conduct and behavior, performance and actions as well as the remunerations for your voluntary services. During this short span of one year, I've had daily contacts with all of you and can truly say that you have more than demonstrated your loyalty, love and devotion to your country, the United States of America.

You have met a challenge, your achievements no doubt have ultimately resulted in a very recent change in policy by the War Department towards all Americans of Japanese descent illuminating their outlook by enormous proportions. It is my great pleasure to congratulate you.

Now we have reached a point where the armed forces have a more urgent need for your voluntary services. This is essential in bringing forth a speedier victory for our United Nations.

On the occasion of the inactivation of your organization, the Varsity Victory Volunteers, after which all of you will make an important decision, it is my chief desire that you shall have a free course and full support in your embarkation. The

Petitioner's Exhibit S—(Continued)

"rudder" is in your charge—God Speed the Ship!

ALOHA AND GOOD LUCK.

RICHARD T. F. LUM
Captain 34th Engineers
A.P.O. 957

After more than 11 months of service with the Army Engineers the Varsity Victory Volunteers were inactivated on January 31, 1943.

The demobilization was requested by members of the VVV who asked to be released in order that they may enlist for service in the United States Army with the American-Japanese combat unit.

In Appreciation for Their Contribution

For their written material:

Shiro Amioka
Herbert Isonaga
Grover Nagaji
Shosc Kagawa
Walter Goto
Katsumasa Tomita
Ted Tsukiyama
Henry Oyasato
Wilfred Mita
Shigemitsu Nakashima
Kaname Takemoto

Petitioner's Exhibit S—(Continued)

For the use of their snapshots:
Calvin Tottori
Clarence Hamaishi
Roy Kobayashi
Ted Tsukiyama
The Honolulu Advertiser
John Onodera
Walter Iwasa
Henry Oyasato
Katsumasa Tomita
The Hawaii Times

For typing and proofreading:
Edward Okazaki
Wilfred Mita
Allen Yamada
Shigemitsu Nakashima

For page make-up and lay-out:
Junichi Buto

For printing and publishing:
Tongg Publishing Company
YUTAKA NAKAHATA
The Editor

[Endorsed]: Filed 4-11-44.

The Court: That blue book there, I don't know whether you intended to offer that in evidence or not.

Mr. Anthony: I don't think it is necessary to encumber the record with that, your Honor.

The Court: All right.

Mr. Anthony: I have a number of statements from military and naval commanders which I would like to offer in evidence. I understand there is no objection, if the Court please. The first is a statement by Admiral Nimitz on March 10, 1943, and on the same sheet there is a statement of a press interview between General Emmons and Frank H. Bartholomew. That is dated January 1, 1943. In the latter statement General Emmons is quoted as saying:

> "The fortress of Oahu is, Gen. Emmons said, now able, in conjunction with the Navy to defend Hawaii against any invasion attempt the Japanese at this time are likely able to muster." [724]

May that be received your Honor?

The Court: Well, you have several of those?

Mr. Anthony: Yes, I have four of them.

The Court: Why not offer them together as 1, 2, 3 and 4?

Mr. Anthony: The second one appears in the Star-Bulletin of December 7, 1943, and contains a quotation from Admiral Nimitz, and also on the same page an item appearing in the Star-Bulletin of June 7, 1943, containing a quotation from Admiral Nimitz, in regard to the attack upon the Japanese.

The Court: What is the quotation?

Mr. Anthony: The Admiral said:

> "Our time has come to attack .... The Jap has dug himself in. We must land and dig him out."

In the second one the Admiral says:

> "'The Japs are now on the defensive. . . . time is working for us now.'" "Admiral Nimitz warned 'we must do everything in our power to aid China because we must use bases in China to attack Japan . . . We are turning out planes and ships faster than Japan can. It's simple arithmetic—subtraction for them and addition for us.'"

In the same article the Admiral pointed out, cautioned, that

> "'. . . the Japanese are still capable of doing great damage.'"

Also, I have two quotations, one from the Star-Bulletin of January 27, 1944, and the other from the Advertiser of January 19, 1944, both from Admiral Carney, Chief of Staff in the South Pacific. The Admiral is quoted as saying:

> "'He (the Jap) knows his number is up. We have proved we can hit him exactly when and where we want. By coordinating our forces, air and sea, we will blockade New Britain and New Ireland forces—which may total 100,000 men.'" [725]

And in the quotation of January 27, 1944, this Admiral says:

> "'It is perfectly evident to everyone that the South Pacific and Southwest Pacific forces are pushing along toward eliminating those bases. They are next on the list.'"—referring to Rabaul and Kavieng.

I would also like to offer in evidence a statement by the Undersecretary of War, appearing in the Honolulu Advertiser of February 4, 1944. The Under Secretary is quoted as saying:

"'Occupation of the Marshalls will widen the crack in Japan's outer defense ring. When it is completed it will shorten the line of supply and communications with the Southwest and South Pacific and make it possible for us to deploy our forces so they can attack the inner defenses of enemy territory. The crack in the outer defense wall may become the breach through which we can advance to the Philippines or Tokyo.'"

"'As we advance in the Pacific we will secure our western defenses. These islands will provide a defense barrier 2,000 miles to the west of the former outer defense of Hawaii.'"

The Court: They may be received in evidence as Exhibits "T", 1, 2, 3, and 4.

(Petitioner's Exhibits "T-1, T-2, T-3, T-4 received in evidence.)

PETITIONER'S EXHIBIT T-1

Nimitz In Tribute To Isle Citizens

(Following is the text of an address given by Admiral Chester W. Nimitz commander in chief of the Pacific fleet and Pacific ocean area, during ceremonies in the legislature at 10 this morning on the occasion of restoration of civil rights to Hawaii.)

It is a distinct privilege to have this opportunity of expressing to the citizens of this community, through their legislative representatives, my admiration and appreciation of their cooperation and participation with the military and naval authorities in the war effort to date.

It is true that such cooperation and acceptance of military government has not been without considerable personal inconveniences and curtailment of the normal way of life, but I am pleased to observe that such deprivations have been cheerfully met.

The selection of Gen. Emmons as the military governor was a fortunate choice.

* * *

I am sure that the harmonious relations which have existed can be attributed equally to his wise administration and to the hearty cooperation of the citizens.

I am confident that the same harmonious relations will continue under the new arrangement which becomes effective today.

During the past year this citadel in the Pacific has been greatly strengthened, which is in keeping with its importance.

However, in spite of this defensive strengthening and in spite of our success against the enemy, he still has the capacity to attempt a destructive raid against our installations should he be willing to accept the risk.

For this reason it is unwise to relax our precautions, which include the blackout.

* * *

On behalf of the officers and men of the various services in this area I thank the citizens of this community for their friendly courtesy and traditional hospitality which has played an important part in the maintenance of high morale.

Star-Bulletin

Hawaii Now Safe Against
Invasion, Says Gen. Emmons
By Frank H. Bartholomew

(Note: Mr. Bartholomew is vice president and Pacific division manager of the United Press Associations, one of the world's two greatest news gathering and distributing organizations. He is in Honolulu on a mission of inspection of U. P. facilities and operations.)

[Stamped] Jan. 1, 1943

Honolulu, Jan. 1. (UP)—Hawaii, safe today under the protecting guns of one of the greatest fortresses on earth against any invasion the Japanese currently may be able to organize, is being steadily strengthened against a possible climactic battle within the next few years, Lt. Gen. Delos C. Emmons, commander of the Hawaiian department, told the United Press last night.

Gen. Emmons, 54 year old West Virginian, is the man who in a short year's time since inheriting the wreckage of the army's air installations at Hickam, Wheeler and Bellows fields, has converted the island of Oahu into what probably is the strongest fortified point on the globe, and certainly the newest and most modern militarily.

This correspondent, permitted to tour certain of the island's new defense installations which may not be reported detailedly, observed engineering and construction feats completed or well underway on a three shift basis which border on the miraculous in ingeniuty, magnitude and speed of construction.

Engineer officers said Gen. Emmons himself was the spark plug of the job in the field as well as in guarded offices where the original plans were worked out.

Gen. Emmons and his car are all over the island of Oahu. He wants to see everything himself at first hand. Each project and unit is frequently checked and improvements ordered as opportunities occur.

Progress Noted

"We are well along on new military installations," Gen. Emmons said. "Almost all the requirements of the airforce, sea coast artillery, field artillery, infantry and service of supply should be finished shortly.

"We have quite a little farther to go with housing for troops all over the island; that job now is about half done. Men currently housed in shacks and plantation buildings which we took over and in tents will be supplied with modern field housing.

"After that, we have the job of rebuilding Hawaii's public roads which our heavy equipment is punishing severely in the present high speed construction work. We require our 18-ton dump trucks

to maintain a speed of 35 miles an hour, quite a workout for roadways as well as equipment.

"Concurrently, there will be an enlargement and improvement of Honolulu's port facilities to accommodate more shipping and speed up handling of cargo."

The fortress of Oahu is, Gen. Emmons said, now able, in conjunction with the navy, to defend Hawaii against any invasion attempt the Japanese at this time are likely able to muster.

The possibility of a hit and run raid is excepted, since this sort of foray may be tried any time the enemy is willing to pay the price which would be high.

"The strategic importance of Oahu for the west coasts of North and Central America and the Panama canal is very great and both sides are well aware of it," Gen. Emmons said. "In order to get at the mainland, the Japanese must first capture the Hawaiian islands, and in order to do that, they must first take Oahu.

"So we are building here for an eventual showdown battle with the Japanese, if in the years to come they are able to mass a force sufficient for an invasion attempt. We are building well because this island must and will be held at all costs."

Japanese Losses Noted

Commenting on the quality of enemy aviation, Gen. Emmons noted that the loss of at least 2,000 Japanese naval fliers materially reduced the efficiency of the enemy's fleet air arm; that the recent increase in flying performance of the enemy in

some areas indicated he has been forced to draw from the army air corps to replace lost naval fliers and planes.

Thus far, Gen. Emmons said, the Japanese army air corps has been principally concerned with defense of Japan and Manchuria.

"Right now, the Japs seem primarily interested in building up a strong outpost line, consolidating gains throughout the Orient and Dutch Indies, and working on development and transport of oil and rubber supplies they have gained," the general said. "Fortunately, they keep coming out of their protective shell to offer us targets in the south and southwest Pacific, and each time such an invitation is extended, our navy has accepted with alacrity and splendid results.

"The navy has closed with the enemy on every possible occasion. In continuous pressure against Jap supply lines, it is estimated that we have sunk enough shipping to seriously cramp enemy activities.

"The army, too, reaches out for a crack against the Jap whenever the opportunity offers, and past events have proven it has done so with great success."

Airfields Developed

In connection with long range bombing, current and future, he said Hawaiian airfields are being developed with an eye to still larger planes which will be delivered to the bomber command in the years to come.

"We will carry the war to Japan," Gen. Emmons concluded. "It will take time, but it will be done

and in sufficient force. We are aware of our vital responsibilities to the territory and to the United States mainland on both offense and defense."

Star-Bulletin

[Endorsed]: Filed 4-11-44.

PETITIONER'S EXHIBIT T-2

Nimitz Sees Different Pearl Harbor Picture

By Charles McMurtry

[Stamped]: Dec. 7, 1943.

Pearl Harbor, Dec. 7. (AP)—Admiral Chester W. Nimitz, sat quietly alone in his office overlooking Pearl Harbor today, awaiting additional reports of the navy's latest strikes in the Marshall islands.

The commander in chief of the Pacific fleet appeared calm—as always—but time must have passed slowly. Carrier task forces, such as sent scores of planes raining bombs on Japanese strongly held central Pacific bases, can not break radio silence in danger zones, even to inform their admiral of their successes.

Nothing more yet has been made public than yesterday's brief communique stating only that the Marshalls were raided. That virtually is all the admiral himself knew.

But Admiral Nimitz could sit back between necessary interruptions by staff members and visualize the great force of carriers and escorting warships he had sent to bombard the Marshalls.

From his bomb-proof headquarters constructed since Pearl Harbor, he had seen most, if not all, of those ships pass within his view in recent months. Most of them also were built since Pearl Harbor and probably all of them participated in the recent raid on Marcus, Nauru, Tarawa, Wake and in the assault and capture of the Gilberts less than three weeks ago.

They were carrying out his Armistice Day declaration, "Our time has come to attack . . . The Jap has dug himself in. We must land and dig him out."

The admiral could look out over the harbor and see evidence of the navy's growing strength. Whether he could see the ships, of course, is censorable. But there were other evidences of increasing power—repair and construction facilities—mushrooming workshops, barracks and many more, all unreportable.

Two years ago anyone looking over the harbor could see only the wreckage of warships, destroyers and other craft destroyed and damaged by the Japanese attack.

Huge clouds of black smoke from oil fires rose from the harbor. Nearby at Hickam field and John Rodgers airport wrecked planes strewed the runway. Hangars and barracks were damaged by bombs.

Other installations over the island of Oahu similarly showed evidences of the attack. Wounded overflowed hospitals, emergency wards, the armory and other buildings.

Today the picture looked bright, with the United States on the offensive.

Lt. Gen. Robert C. Richardson Jr., commanding general, central Pacific, recently warned another sneak attack is possible. Confidence prevails, however, it would be repulsed without too great damage, if it should come.—Star-Bulletin.

Nimitz Planning Blows In Pacific

[Stamped]: Jun 7 1943

Berkeley, Cal., June 7. (AP)—The Pacific fleet is being steadily reinforced and will reach formidable proportions by the end of this year, said Admiral Chester W. Nimitz, commander in chief of the Pacific fleet, who is on the mainland to confer on new offensive moves against the Japanese. Admiral Nimitz disclosed his presence on the mainland Sunday in a surprise appearance at the University of California commencement exercises at which he was awarded an honorary LL.D. degree.

Speaking to the university alumni Admiral Nimitz explained "much as I desire to be here I couldn't have left my post unless I had a job to do. I'm happy commencement day coincided with the conference which I am called to attend—a conference which isn't particularly solicitous as to the welfare of Hirohito and which I hope will carry trouble to the Japanese."

He didn't amplify his statement.

The admiral denied supplies for the Pacific war were being neglected, announcing "by the end of

the year our planes and ships in the Pacific will represent a very formidable force. We really are getting our share of war material."

Although he asserted the Japanese are on the defensive and "time is working for us now," Admiral Nimitz warned "we must do everything in our power to aid China because we must use bases in China to attack Japan. . . . We are turning out planes and ships faster than Japan can. It's simple arithmetic—subtraction for them and addition for us."

He pointed out that Japan has made no serious threat to the Pacific coast since Midway a year ago but cautioned the Japanese "are still capable of doing great damage."—Star-Bulletin.

[Endorsed]: Filed 4-11-44.

PETITIONER'S EXHIBIT T-3

New Type of U. S. Offensive Is Promised!

Nauru Won't Stay Japanese Long, Says Halsey Staff Chief

By Frank Tremaine

Headquarters, South Pacific Force, Jan. 27. (U.P.)—Rabaul and Kavieng, with their estimated 100,000 men—next Japanese bases on the United States' list in the south Pacific—will be eliminated with something new from Admiral William F. Halsey's bag of offensive tricks, Rear Admiral Robert

B. Carney, south Pacific chief of staff, indicated today.

Almiral Carney also hinted that the Japanese will not be permitted to occupy Nauru island for long. Nauru is the enemy's only useable base between the south Pacific and central Pacific areas.

Aggressive, energetic Admiral Carney, whose balding head belies his youthfulness, pointed out that Bougainville and Buka are already useless to the Japanese and that United States planes and carriers have proved they can hit the enemy at Rabaul "any damn time we want."

"The next two obvious points of Japanese strength are Rabaul and Kavieng," Admiral Carney said.

* * *

"It is perfectly evident to everyone that the south Pacific and southwest Pacific forces are pushing along toward eliminating those bases. They are next on the list.

"We plan to put them out of business.

"But just how we will do it will be something the enemy least expects. It won't be in accordance with any familiar pattern."

Admiral Carney said that aerial observation of Rabaul and Kavieng indicates that the Japanese already have lost all confidence in their ability to use them for anything of great value.

* * *

"He knows his number is up," the admiral said. "We have proved we can hit him exactly when and where we want. By coordinating our forces, air

and sea, we will blockade New Britain and New Ireland forces—which may total 100,000 men.—Star-Bulletin, 1-27-44

100,000 Japs Face Annihilation In New South Pacific Moves

By Frank Tremaine
(United Press Staff Correspondent)

South Pacific Headquarters, Jan. 18—New tactics from Admiral William F. Halsey, bag of tricks will be used to "eliminate" Rabaul in New Britain and Kavieng in New Ireland and with them 100,000 Japs, Rear Admiral Robert Carney, South Pacific chief of staff, predicted tonight.

Carney pointed out that Bougainville and Buka already are useless to the Japs, and said offensives against Rabaul and Kavieng—"the next Jap base on the U. S. list"—would put them "out of business, but just how, we'll do it will be something the enemy least expects. It won't be in accordance with any familiar pattern."

Japs Know Number Is Up

Carney said air observation of Rabaul and Kavieng indicates the Japs already have lost all confidence in their ability to use them for anything of great value.

"The Jap knows his number is up," Carney said. "We've proved we can hit him exactly when and where we want. By coordinating our forces in the air and at sea, we will blockade New Britain and New Ireland and their forces, which may run above 100,000 men."

Carney also indicated Nauru may soon be wrested from the Japanese. Referring to the South Pacific and Central Pacific offensives, which spread an arc from the Gilberts to the Solomons, Carney said:

"The Jap still holds Nauru, and it is illogical to expect us to permit him to occupy this salient much longer."—Advertiser 1-19-44

[Endorsed]: Filed 4-11-44.

PETITIONER'S EXHIBIT T-4

U.S. Casualties In Invasion Of Marshalls Held Moderate

By Sandor S. Klein

(United Press Staff Correspondent)

Washington, Feb. 3—American forces in the Marshall Islands are meeting heavy resistance, but the casualties thus far have been moderate, Undersecretary of War Robert Patterson said today.

"Fighting is continuing," Patterson told a press conference.

"Our troops are making excellent progress. Preliminary reports show fine coordination between land, sea and air forces—which is the outstanding characteristic of our amphibious operations."

Positions Secure

Patterson said that the position of marine forces on Roi and Namur islands now appeared to be secure while the 7th Army division was proceeding

with the occupation of Kwajalein.

"Occupation of the Marshalls will widen the crack in Japan's outer defense ring," he said. "When it is completed it will shorten the line of supply and communications with the Southwest and South Pacific and make it possible for us to deploy our forces so they can attack the inner defenses of enemy territory.

"The crack in the outer defense wall may become the breach through which we can advance to the Philippines or Tokyo."

Patterson said that invasion details were still awaited in Washington.

Fleet Not Challenged

He noted that the Japanese had not yet challenged the U. S. fleet, although they had plenty of opportunity to do so.

He ponted out that in attacking Kwajalein atoll United States forces bypassed Wotje, Maloelap, Mille and Jaluit just as Kiska was bypassed when Attu was occupied.

"As we advance in the Pacific we will secure our western defenses," he said. "These islands will provide a defense barrier 2,000 miles to the west of the former outer defense of Hawaii."—Advertiser, 2-4-44

[Endorsed]: Filed 4-11-44.

Mr. Anthony: In response to my inquiry, if the Court please, in regard to the Japanese that are employed in this Territory and the Japanese that are in the Armed Forces, Counsel has furnished me a memorandum which does not give the number of casualties among the Japanese American of Japanese ancestry; it does give the number of persons in the Armed Services and the number of Japanese who are employed in Army reservations. Does your Honor want to hear what the numbers are?

The Court: Yes. [726]

Mr. Anthony: The reported figure is as follows: The number of Japanese employed on military reservations, including installations, military and naval projects, Territory of Hawaii, including U.S.E.D. employees—there is A.E.T.C.——

The Court: What does U.S.E.D. mean?

Mr. Anthony: United States Engineers. They are the fellows out at Punahou, your Honor. United States Engineers Department, Army projects.

The Court: Is that a department of the Army?

Mr. Ennis: Yes, your Honor, they are a part of the War Department.

The Court: A department within a department?

Mr. Ennis: Well, yes, your Honor, that is correct.

The Court: I asked because it was a new term to me. Is it the same as the Engineer Corps of the Army?

Mr. Ennis: I'm sorry, your Honor,——

Mr. Anthony: Well, there are two outfits, one is a Corps of Engineers and the other is the

U.S.E.D. We ought to have somebody in this room that can tell us the difference. And then there is a District Engineer that has an office out in Shafter.

The Court: Well, that's a part of the Engineer Corps.

Mr. Anthony: Well, anyhow, the figure is 27,497.

The Court: Twenty-seven thousand?

Mr. Anthony: That are persons of Japanese ancestry working on Army reservations, military reservations. I am told by Counsel that that includes those that are working in the military hospitals. [727] Is that not correct?

Mr. Ennis: Yes, I am so advised.

Mr. Anthony: The breakdown is: American citizens of Japanese ancestry, 6,778; aliens, 743. I got this wrong, your Honor. The first figure, 27,497 is the total number of employees, civilian employees of all the nationalities. The next figure, American citizens of Japanese ancestry, 6,778; aliens, 743.

The Court: Alien Japanese?

Mr. Anthony: Alien Japanese. Then in the Navy, the total number of employees is 2,000; American citizens of Japanese ancestry, 585; and aliens, none. I understand that the 2,000 Japanese that work on Navy projects do not work in the Navy Yard. This memorandum is very confusing, your Honor. Two thousand is the total number of employees. I thought they meant Japanese. That is why I asked about it. The figure 585 is the num-

ber of Japanese out of the 2,000. They are not employed in the Navy Yard.

The Court: They are not?

Mr. Anthony: They are not. They are employed by the Byrne Construction Company. That is one of the prime contractors for the U. S. Navy.

The Court: You mean there are no Japanese, Americans of Japanese ancestry employed in the Navy Yard?

Mr. Anthony: I don't think they allow them in there. I am not sure.

Mr. Ennis: Yes, I am so advised.

Mr. Anthony: I don't think they allow Japanese in the Navy [728] Yard.

The Court: How long has that been in effect?

Mr. Ennis: We have inquired, your Honor, from the Director of Personnel for the Navy, and he advises us that there are no civilian Japanese employed in the Navy Yard. Now, if it is important, your Honor, as to whether that is a recent rule or not, I will find out.

The Court: I merely knew of my own experience, having been in there since the beginning of war, at the Pearl Harbor Navy Yard, and I saw a number of Japanese, presumably citizens, presumably citizens of Japanese parents.

Mr. Ennis: Well, your Honor, all the information that I have available right now is that which has been stated, but I will check a little further.

The Court: I don't know that that is of importance to the case.

Mr. Anthony: We offer the memorandum in

evidence, your Honor. Counsel has not produced the number of casualties, and I think if there is anything at all in this business of dual citizenship —which I submit is wholly without any relevance to the issues in this case—but if we are going into it, let's find out how many of these Japanese are actually dead, how many are actually wounded, how many are in Hawaii. It's a simple matter. They can send word to the War Department.

Mr. Ennis: As indicated here, there are no current figures in the Territory, and we'd be glad to go further and see what [729] figures we can get from the War Department in Washington.

The Court: Well, I can't see where that is material in any respect to the case.

Mr. Anthony: The whole business is immaterial. It's all a lot of nonsense as far as I can make out. But we have been obliged to address ourselves to something that has nothing to do with this case. And I say if we are going to do it, let's do the job correctly.

Mr. Ennis: I think it is a matter of public notice in the press that there have been a substantial number of casualties, and——

The Court: Well, I feel quite sure that the case isn't going to be resolved on matters of that kind.

Mr. Anthony: Very well, I'll withdraw my request.

The Court: Exhibit "U" is received in evidence.

(Petitioner's Exhibit "U" was received in evidence.)

PETITIONER'S EXHIBIT U

Honolulu, T. H.
10 April 1944

Memorandum to Colonel Wm. R. C. Morrison

Subject: Information requested by Court and Opposing Counsel relative to Japanese.

1. Actual Number of American Citizens of Japanese Ancestry Now in the United States Army Who Were Inducted or Volunteered in the Territory of Hawaii.

Lt. Col. Henry Best, Deputy Director of Selective Service, advised that there were now 5,226 citizens of Japanese ancestry serving in the United States Army who were inducted or volunteered during the period commencing December 1940 and extending up to the present date.

2. Actual Number of Casualties in American Citizens of Japanese Ancestry Serving With American Forces Who Were Inducted or Volunteered From the Territory of Hawaii.

Selective Service officials and Military Intelligence officials state that although several of the AJAs have been killed in action in Italy, the exact number is not available at the present time in the Territory of Hawaii.

3. Total Number of Japanese Evacuated from the Territory of Hawaii from December 7, 1941 to the Present Date.

1,747. (This figure can be broken down to show AJAs, Aliens and families of these two groups).

4. Total Number of Japanese Interned in the Territory of Hawaii from December 7, 1941 to the Present Date.

1,396. (This figure can be broken down as to Japanese Aliens and citizens of Japanese ancestry, if desired).

5. Total Number of Japanese Interned During the First Quarter of 1944.

96. Total number interned during March, 1944—41. (These figures can be broken down as to Aliens and American citizens of Japanese ancestry, if desired.)

6. Total Number of Internee Cases, That Is the Total Number of Japanese of All Classes Which Have Been Considered for Custodial Detention, Investigated or Otherwise Handled by the Military Intelligence Agencies in This Area.

50,000.

7. Were Citizens of Japanese Ancestry Who Volunteered Recently for Military Service Asked Question of Whether They Were Dual Citizens?

Lt. Col. Henry Best, Deputy Director of Selective Service states that all of the volunteers in this group executed Form 304-A Revised which included, among other questions, the following:

> "25. To the best of your knowledge, was your birth ever registered with any Japanese governmental agency for the purpose of establishing a claim to Japanese citizenship?.....
>
> .....
>
> "(a) If so registered, have you applied for

cancellation of such registration? (Expatriation) ..... Yes or No. .....
When? ..... Where? .....

(Col. Best also advised that no statistics were kept relative to the number of volunteers that were dual citizens and to obtain this information it will be necessary to pull all of the individual files located in the several local boards throughout the Territory.)

8. Ascertain Full Facts Relative to Actual Work Assigned to Petitioner Lloyd C. Duncan Subsequent to His Incarceration in the City and County Jail.

Lieut. Jules Sachson, 810th M.P. Company, Immigration Station, Honolulu, T.H., stated that he was in charge of the prisoners that were sent to the 810th M.P. Company from the City and County Jail. That they were assigned work under his supervision. He stated that Lloyd C. Duncan first appeared on the Company's records on March 3, 1944 and was assigned to work in the Supply Room; that he worked in the Supply Room from the 3d of March through the 13th of March; that the Company's records did not show that Duncan was working at the 810th M.P. Company on the 14th of March. He stated, however, that on this day he had sent 4 other Provost Court prisoners to Kaneohe to work on a cesspool project which had been previously commenced by the Army.

He stated that on the 15th of March Duncan was sent to Kaneohe along with a work detail and that his sergeant advised him that Duncan refused to go

into the hole and work and was given other work near that project. That Duncan returned to Kaneohe on the 17th and 18th of March 1944. That Duncan worked around the 810th P.M. Company on Sunday, March 19, and that on Monday, March 20, he was not sent down by the City and County Jail officials for work.

Further that Duncan worked on the 21st, 22nd, 23rd, and 24th around the 810th M.P. Company at the Immigration Station. That on the 25th of March 1944, he was sent back to Kaneohe; that on the 26th of March he worked at the 810th M.P. Company, Immigration Station, Honolulu. That on March 27th and 28th he worked at Kaneohe on the cesspool project, and on the 29th and 30th Duncan worked at the Halekai Officers' Club at Waikiki.

That his records did not show that Duncan worked under his supervision any time subsequent to March 30, 1944.

Lieut. Sachson stated that he did not know the petitioner in this case and certainly did not know he had filed application for a Writ of Habeas Corpus; furth. r, that Duncan was assigned along with other prisoners to the work that had to be done and was not discriminated against in any manner. Lt. Sachson stated that when the prisoners come down from the City and County Jail, that he is not advised whether or not they will do hard labor or light work; that his only instructions were to put them to work.

9. The Number of Japanese Employed on Military Reservations, Installations and Military and

Naval Projects, Territory of Hawaii, Including Used Employees, Etc.

Army projects—total number of employees	27,497
American citizens of Japanese ancestry	6,778
Aliens of Japanese ancestry	743

(These figures may be slightly off, but they are the best estimate that could be obtained on such short notice)

Navy projects—Byrne Construction Company (Handles construction for United States Navy outside of Pearl Harbor proper)

Total number of employees	2,000
Amer. citizens of Japanese ancestry	585
Aliens of Japanese ancestry	none

ANGUS M. TAYLOR, JR.
1st Lieut., CAC.

[Endorsed]: Filed 4-11-44.

Mr. Ennis: If the Court please, I offer in evidence, without objection of opposing Counsel, a copy of the official report of the Navy Department of December 4, rather December 5, 1942, on the damage done at Pearl Harbor on December 7, 1941, and 34 photographs of that damage taken from the files of the Navy Department.

The Court: Has that got anything to do with the so-called Roberts' Report?

Mr. Ennis: Well, your Honor, the Roberts' Report——

The Court: It follows the same figures?

Mr. Ennis: Yes, but it adds this, your Honor, that the [730] Roberts' Report was published considerably before this and before the Government felt that it could release the information as to the extent of the damage. And, therefore, the Roberts' Report did not contain the extent of the damage because it was published just a few months after the actual attack and before we knew or were sure that the Japanese had all the information. Finally, the extent of the damage was explained in this report a year after the attack.

Now, the purpose of this, your Honor, is to show the character of an attack which can be made on that installation and the extent of an attack which the military authorities feel must be protected against.

The Court: Well, if there is no objection, you may put it in evidence, but so far as I can see it doesn't have any bearing on the case. Hearing no objection, it is received in evidence as Exhibit 14.

(Respondent's Exhibit "No. 14" was received in evidence.)

RESPONDENT'S EXHIBIT No. 14

THE NAVY'S REPORT ON PEARL HARBOR

Washington, Dec. 5 (U.P.)—Following is text of the Navy department's report on Pearl Harbor:

1. On the morning of Dec. 7, 1941, Japanese aircraft temporarily disabled every battleship and most

of the aircraft in the Hawaiian area. Other naval vessels, both combatant and auxiliary, were out of action and certain shore facilities at the army air bases at Hickam and Wheeler Fields and at the naval air stations at Ford Island and Kaneohe Bay were damaged. The aircraft were all replaced within a few days and interference with facilities generally was limited to a matter of hours.

2. When the Japanese attacked Pearl Harbor, two surface ship task forces of the Pacific Fleet were carrying out assigned missions at sea and two such task forces were at the main base following extensive operations at sea. Discounting small craft, 86 ships of the Pacific fleet were moored in Pearl Harbor. Included were eight battleships, seven cruisers, 28 destroyers and five submarines. No United States aircraft carriers were present.

Five Battleships Disabled

3. As a result of the Japanese attack, five battleships—the Arizona, Oklahoma, California, Nevada and West Virginia—and three destroyers—the Shaw, Cassin and Downes—the minelayer Oglala, the target ship Utah and a large floating drydock either were sunk or damaged so severely that they would serve no military purposes for some time. In addition, three battleships—the Pennsylvania, Maryland and Tennessee—three cruisers—the Helena, Honolulu and Raleigh—the seaplane carrier Curtiss and the repair ship Vestal were damaged.

4. Of the 19 naval vessels listed above as sunk or damaged, the 26 year old battleship Arizona will be the only one permanently and totally lost. Prep-

arations for righting the Oklahoma now are in process, although a final decision as to the wisdom of accomplishing this work at this time has not been made.

Salvage, Repair 15 Ships

Main and auxiliary machinery of approximately 15 percent of the value of the Cassin and Downes was saved. The other 15 vessels either have been or will be salvaged and repaired.

The eight vessels described in the second sentence of paragraph three returned to the fleet months ago. A number of the vessels described in the first sentence of paragraph three now are in full service, but certain others which required extensive machinery and intricate electrical overhauling as well as refloating and hull repairing are not yet ready for battle action. Naval repair yards are taking advantage of these inherent delays to install numerous modern features of improvement.

To designate these vessels by name now would give the enemy information vital to his war plans. Similar information regarding enemy ships which our forces subsequently damaged but did not destroy is denied to us.

On Dec. 15, only eight days after the Japanese attack and at a time when there was an immediate possibility of the enemy's coming back the Secretary of the Navy announced that the Arizona, Shaw, Cassin, Downes, Utah, and Oglala had been lost, the Oklahoma capsized and other vessels damaged.

Repairs Exceeded Hopes

Fortunately, salvage and repair accomplishments at Pearl Harbor exceeded the most hopeful expectations.

Eighty naval aircraft of all types were destroyed by the enemy. In addition, the army lost 97 planes at Hickam and Wheeler Fields. Of these, 23 were bombers, 66 were fighters and eight were other types.

The most serious American losses were in personnel. As a result of the raid on Dec. 7, 2,117 officers and enlisted men of the Navy and Marine Corps were killed, 960 still are reported missing and 876 were wounded but survived. Army casualties were as follows: 226 officers and enlisted men killed or later died of wounds, 396 wounded, most of whom now have recovered and returned to duty.

At 7:55 a.m. Dec. 7, Japanese dive-bombers swarmed over the Army air base at Hickam Field and the Naval air station on Ford Island. A few minutes earlier, the Japanese had struck at the Naval air station at Kaneohe Bay. Bare seconds later, enemy torpedo planes and dive-bombers swung in from various sectors to concentrate an attack on heavy ships in Pearl Harbor.

Attack Based on Exact Data

The enemy attack, aided by the element of surprise and based on exact information, was very successful. Torpedo planes, assisted effectively by dive-bombers, constituted the major threat in the first phase of the Japanese attack, lasting approximately half an hour. Twenty-one torpedo planes made four attacks and 30 dive-bombers came in eight waves during the period. Fifteen horizontal

bombers also participated in this phase of the raid.

Although the Japanese launched their initial attack as a surprise, the battleships were ready and machineguns opened fire at once and were progressively augmented by remaining antiaircraft batteries as all hands promptly were called to general quarters. Machine guns brought down two and damaged others in the first wave of torpedo planes. Practically all battleship antiaircraft batteries were firing within five minutes, cruisers within an average time of four minutes and destroyers, opening up with their machine guns almost immediately, averaged seven minutes in bringing all antiaircraft guns into action.

From 8:25 to 8:40 a.m., there was a comparative lull in the raid, although air activity continued with sporadic attacks by dive and horizontal bombers. This respite was terminated by the appearance of horizontal bombers which crossed and recrossed their targets from various directions and caused serious damage.

Dive-Bombers Return

While the horizontal bombers were continuing their raids, Japanese dive-bombers reappeared, probably being the same ones that participated in the earlier attacks. This phase, lasting about half an hour, was devoted largely to strafing. All enemy aircraft retired by 9:45 a.m.

Prior to the Japanese attack there were 202 U. S. naval aircraft of all types on the island of Oahu in flying condition, buf 150 of these were permanently

or temporarily disabled by the enemy's concentrated assault, most of them in the first few minutes of the raid. Of the 52 remaining naval aircraft, 38 took to the air on Dec. 7, the other 14 being ready too late in the day or being blocked from take-off positions.

Of necessity, the Navy was compelled to depend on antiaircraft fire for its primary defensive weapon and this condition exposed the fleet to continuous air attack.

By coincidence, 18 scout bombing planes from a U. S. aircraft carrier were en route and arrived at Pearl Harbor during the raid. These were included in the foregoing figures. Four of these scout bombers were shot down, 13 of the remaining 14 taking off again in search of the enemy. Seven patrol planes were in the air when the attack started.

There was a total of 273 army planes on the Island of Oahu on Dec. 7. Very few of these were able to take off because of damage to runways at Hickam and Wheeler Fields.

It was difficult to determine the total number of enemy aircraft participating in the raid, but a careful analysis of all reports makes it possible to estimate the number as 21 torpedo planes, 48 dive-bombers and 36 horizontal bombers, totalling 105 planes of all types. Undoubtly certain fighter planes also were present, but these were not distinguished by types and are included in the above figures.

Japs Lost 48 Planes

The enemy lost 28 aircraft due to Navy action, and the few Army pursuit planes that were able to take off shot down more than 20 Japanese planes. In addition, three submarines of 45 tons each were accounted for.

Damage suffered by the U. S. Pacific Fleet as a result of the Japanese attach on Dec. 7 was most serious, but the repair job now has been nearly completed and thanks to the inspired and unceasing efforts of naval and civilian personnel attached to various repair yards, especially at Pearl Harbor itself; this initial handicap soon will be erased forever.

[Endorsed]: Filed 4-11-44.

Mr. Ennis: I have one more. I offer in evidence as Respondent's Exhibit 15 a memorandum dated April 10, 1944, stating the number of persons of Japanese ancestry interned in the Territory from December 7, 1941, to April 10, 1944, broken down into aliens, dual citizens, and U. S. citizens.

The Court: What are the figures?

Mr. Ennis: The total figure is 1,396.

The Court: I was asking for a description. No. 14, what do you call that? What should it be designated as in the record [731] of exhibits?

Mr. Ennis: This memorandum?

The Court: No, Exhibit 14, the one relating to damage.

Mr. Ennis: Well, it is the copy of the official report of the Navy Department on the damage at Pearl Harbor.

The Court: What is the date of it?

Mr. Ennis: December 5, 1942.

The Court: Is it signed or authenticated by anyone?

Mr. Ennis: No, it was used as a press release of the Navy Department, your Honor.

The Court: All right.

(Respondent's Exhibit "No. 15" was received in evidence.)

RESPONDENT'S EXHIBIT No. 15

Confidential
Headquarters United States Army Forces
Central Pacific Area
Office of the Assistant Chief of Staff
for Military Intelligence
Counter Intelligence Division
Box 3, APO 456

In reply refer to:

10 April 1944

MEMORANDUM FOR THE OFFICE OF THE MILITARY GOVERNOR:

Subject: Japanese Internment

The following data are from the official files of this office:

a. Number of Japanese Interned, Territory of Hawaii, from 7 December 1941, to 10 April 1944..... 1,396

Aliens	Dual Citizens	American Citizens
857	504	35

(1) Released or Paroled 217

Aliens	Dual Citizens	American Citizens
137	60	20

(2) Relocated on Mainland 313

Aliens	Dual Citizens	American Citizens
7	300	6

(3) Repatriated to Japan (All Aliens)..... 70
(4) Deceased (All Aliens) 10

610

(5) Remainder in Custody 786

	Aliens	Dual Citizens	American Citizens
On Mainland	597	—	—
In Territory	36	144	9

BYRON M. MEURLOTT
Major, M. I.,
Assistant A. C. of S., G-2 (CID)
Confidential

[Endorsed]: Filed 4-11-44.

Mr. Anthony: Your Honor, there are a number of official documents that have been referred to, and I want it to be understood that we are at liberty to refer to any of these official documents, such as the Report of the Chief of Staffs, without the necessity of offering it in evidence, or the Roberts' Report, or the Tolan Committee Report, which I will make available to the Court. As a matter of law under the Federal statute, these documents, I think, may be taken judicial notice of by your Honor. There is no need to have them physically in the record.

Mr. Ennis: This is my view in respect to these Government documents, your Honor.

The Court: Yes, and it is the Court's view.

Mr. Ennis: We would like to discuss with your Honor, either here or in the Chambers, what arrangements we might make for [732] argument of the case. What we would like to do would be to argue the case tomorrow, if we could, your Honor.

The Court: Have you rested or are you about to rest now?

Mr. Ennis: Your Honor, I think the Respondent is prepared to rest, as I believe the Petitioner is, subject to final check together as to whether we have everything in that we want to stipulate. Substantially, we are finished with the trial, as far as we are concerned.

Mr. Anthony: How about the last attack on the vessels between the mainland of the United States and here?

Mr. Ennis: Oh, yes.

Mr. Anthony: From the Territory of Hawaii.

Mr. Ennis: The last attack upon a vessel within the Territorial water of Hawaii has been within the last five months.

Mr. Anthony: Well, if the Court please, that isn't the question I asked. Apparently they don't want to give me the answer to the question.

Mr. Ennis: Well, I do. I understood from what you just stated that that was the question you asked. If that isn't correct, let's get straightened out.

Mr. Anthony: No. Your Honor, in asking whether or not any of these vessels—when I read the evidence into stipulation, your Honor asked how many of these vessels had been attacked. I asked that question but was not given the information for reasons deemed adequate to the Military and Naval Services. Then your Honor asked when the last attack took place. This was in connection [733] with the convoy system between the West Coast and Hawaii. Now, I don't understand that as responsive to this question. Is that your understanding?

Mr. Ennis: Well, this is the best information I have been able to obtain, Mr. Anthony, on the subject.

The Court: Well, now, how long would it require to discuss any matters with the Court preliminary to argument? The Court is prepared to make a statement more or less directive at this time as to what argument, at least in part, you might eliminate, as to what subjects you might eliminate from the argument.

The questions in this case are not whether Lloyd C. Duncan created a disturbance on a Naval reservation where he was employed, or whether he committed an assault on marine guards or was assaulted by marine guards, or whether he had a fair trial before an Army Provost Court, in accordance with late day practice before such courts, or whether he was unjustly found guilty and given an inordinately severe sentence upon the offense charged, or whether he was mistreated by the Sheriff in being forced to perform hard labor when the mittimus under which

the Sheriff took him in custody did not impose labor, nor whether the Sheriff has any lawful right or power to assign hard labor upon a prisoner taken by him into the City and County Jail, even had the mittimus demanded it.

These questions were of passing interest during the trial and such testimony was offered as to some of them, but at this time, upon a general review of the situation, all of them are considered immaterial and irrelevant to the predominant and [734] controlling question presented in the case, and all evidence relating to them is ordered stricken and will be disregarded.

The question here is: Has a Provost Court, set up in the Navy Yard at Pearl Harbor, Oahu, under an order of October 27, 1943, of the Military Governor of the Territory of Hawaii, lawful power to try and convict a civilian residing outside of any Naval or Military reservation, of violation of an order of the Military Governor of March 10, 1943, committed on a Naval reservation with respect to Naval personnel?

Now, it seems to me that that question encompasses the entire case. So by way of a preliminary announcement by the Court, if that will save you time and reduce the scope of your arguments, why that is what it was intended for.

Now, are there other matters or problems in connection with the argument that you want to discuss?

Mr. Ennis: No, your Honor, only the question of filing briefs after the argument.

The Court: I think that it would be better to

consider and pass upon that after hearing such oral argument as you might choose to make. At this time I can't foresee any helpfulness that might come from filing briefs. It will depend largely upon the convincing clarity and reasoning of your oral argument.

Mr. Ennis: Could we have the argument tomorrow, your Honor?

The Court: Yes. Again, at what hour do you wish to argue? [735]

Mr. Ennis: Nine o'clock.

The Court: Is that agreeable?

Mr. Anthony: It's all right with me.

Mr. Ennis: Do you wish to fix the amount of time for oral argument?

The Court: In this case I don't care to impose any limit. I would be thankful if you could both give me an estimate of the probable time that it would require for opening and closing argument, if you can make any estimate at this time.

Mr. Ennis: As far as I am concerned, we ought to be able to handle it in one session tomorrow morning, that is, both sides altogether.

The Court: And finish before noon?

Mr. Ennis: Yes.

Mr. Anthony: Yes.

The Court: However, if you want more time, it is available to you.

Mr. Ennis: Thank you, your Honor.

Mr. Anthony: We haven't arranged the order of argument, your Honor.

The Court: Well, it may be a little difficult in a technical way to say who has the opening and who the closing. I would assume at first blush that the Petitioner would carry the burden and have the opening and closing.

Mr. Ennis: That is entirely satisfactory, your Honor.

Mr. Anthony: All right. [736]

The Court: Is there anything else before the Court?

The Clerk: No, your Honor.

The Court: The Court is adjourned until nine o'clock tomorrow morning.

(The Court adjourned at 12:35 o'clock, p. m.) [737]

Honolulu, T. H.
April 12, 1944
9:07 a. m. to 12:10 p. m.

Arguments were presented as follows:
Mr. Anthony in behalf of the Petitioner;
Mr. Ennis in behalf of the Respondent.

On April 13, 1944, at 10:05 o'clock a. m., Delbert E. Metzger, Judge, filed a written decision with the Clerk of the Court. [738]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, Territory of Hawaii, do hereby certify as follows:

That I am the Official Reporter of the above-named U. S. District Court;

That the foregoing is a true and correct transcript of testimony taken by me and transcribed from my stenographic notes in Habeas Corpus No. 298, In the matter of the Application of Lloyd C. Duncan for a Writ of Habeas Corpus, held in the above-named Court on April 5, 6, 7, 8, 11 and 12, 1944, before the Hon. Delbert E. Metzger, Judge.

Apr. 29, 1944.

ALBERT GRAIN,
Official Court Reporter. [739]

[Title of District Court and Cause.]

A hearing was held on the above-entitled matter in the Judge's Chamber, Federal Court Building, Honolulu, Territory of Hawaii, on April 27, 1944, at 9:40 o'clock, a. m. [740]

The Court: As I understand it, this session is for the purpose of notifying the Court of the Petitioner's present position.

Mr. Anthony: Yes, the circumstances of the Petitioner's present position. At this time, if the Court please, I'd like to make a statement in regard to the Petitioner, which is this:

As the Court knows, the judgment in this case discharges the prisoner and further provides that

in the event of an appeal the Petitioner is released on his own personal security; that is in obedience to Rule 45 of the Supreme Court.

The Petitioner, immediately upon the issuance of the writ in this case and prior to the determination of the cause on its merits, was released upon bond. The bond was deposited and he was out on bail pending the trial on the merits. At that time the Petitioner, acting under my advice, reported to work at the Pearl Harbor Navy Yard and he was refused admission at the gate. He asked his brother, Mr. James Duncan, to intercede in his behalf, and his brother ascertained that under no circumstances would the Petitioner be permitted to return to work at the Pearl Harbor Navy Yard while his case was pending. Accordingly, the Petitioner did not return to work.

After the final determination of this cause and the rendering of the Court's opinion, he again presented himself for work at Pearl Harbor and again was refused admission, and he ascertained through his brother, who is a worker at Pearl Harbor, that Commander McCafferty and those in charge of the Pearl Harbor Navy Yard had given definite instructions that the Petitioner would not be permitted to return to work but that the Petitioner would [741] be transferred to the Mare Island Navy Yard in California.

In view of the fact that this man is a skilled mechanic, and the work that he does can only be done at Pearl Harbor Navy Yard here in the Territory, he has no alternative but to leave the jurisdiction of

the Territory of Hawaii and seek work elsewhere. And accordingly, under those circumstances, he has agreed to be transferred to the Mare Island Navy Yard.

Our purpose in coming before this Court is to apprise the Court of the situation that the Petitioner now finds himself in, so that the Court may know that under the arrangement that has been made with the U. S. Navy Yard he is about to be transported to Mare Island for employment.

We have prepared and will file in this Court his personal undertaking to respond to any judgment in any Appellate proceedings. What we are doing here is simply advising the Court of what the Petitioner is obliged to do, so that the Court may make such order as it deems appropriate under the circumstances.

The Court: The personal recognizance without surety would be accepted by the Court, and the surety heretofore given is discharged.

Mr. Anthony: And the cash bail is ordered refunded?

The Court: Yes.

(The hearing adjourned at 9:50 o'clock, a. m.) [742]

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, Territory of Hawaii, certify as follows:

That the foregoing is a true and correct transcript of proceedings in Habeas Corpus No. 298, in the matter of the application of Lloyd C. Dun-

can for a Writ of Habeas Corpus, held in the Judge's Chamber on April 27, 1944, at 9:40 a. m.

Apr. 29, 1944.

ALBERT GRAIN. [743]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD ON APPEAL

United States of America,
Territory of Hawaii.—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 743, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above entitled cause as the same remain of record and on file in my office; and I further certify that I am including with said record the following exhibits:

Petitioner's Exhibits "A" to "H" inclusive, "J" to "N" inclusive and "P" to "V" inclusive

Respondent's Exhibits Nos. 1 and 4 to 18, inclusive,

that the costs of the foregoing transcript of record on appeal are $113.45 and that said amount has been charged by me against the United States. [744]

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court this 2nd day of May, A. D. 1944.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court,
Territory of Hawaii. [745]

[Endorsed]: No. 10763. United States Circuit Court of Appeals for the Ninth Circuit. Duke Paoa Kahanamoku, Sheriff of the City and County of Honolulu, Appellant, vs. Lloyd C. Duncan, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed May 5, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10763

UNITED STATES EX REL DUNCAN,
Appellee,

v.

KAHANAMOKU,
Appellant.

APPELLANT'S STATEMENT OF POINTS ON APPEAL

The judgment of the District Court ordering the discharge of the appellee from custody upon a writ of habeas corpus was erroneous in that:

I. The pleadings consisting of the petition for a writ, order to show cause why a writ should not issue, the return and answer to the petition, to the order to show cause and to the return, and the traverse disclose that the privilege of the writ of habeas corpus was lawfully suspended and martial law lawfully existed pursuant to public proclamations of the Governor of the Territory of Hawaii issued pursuant to the Organic Act of the Territory; and that pursuant to such martial law the appellee had been convicted by a military provost court and was imprisoned and detained by appellant for the violation of the military regulation involved herein; and therefore it appeared upon the pleadings that a writ of habeas corpus should not have issued, and appellee should not have been released

on bond pending a hearing, and should not have been discharged.

1. The writ should not have been issued.

2. The appellee should not have been released on bond prior to a determination of the case.

3. Under the Organic Act the suspension of the privilege of the writ and martial law promulgated by the Governor with the approval of the President and continued by further Proclamation of the Governor, continues until promulgation of its termination by the President, or by the Governor with the approval of the President, and could not be terminated by the District Court.

II. Upon the hearing and trial on the pleadings it was established that there was a reasonable basis for the judgment that imminent danger of invasion requiring the continued suspension of the privilege of the writ and existence of martial law and that there was no basis for invalidation of that judgment by the District Court; that the privilege of the writ lawfully continued to be suspended and martial law continued in existence and the appellee was lawfully detained pursuant to martial law and could not lawfully be released upon a writ of habeas corpus.

1. The executive authorities which proclaimed martial law and the suspension of the privilege of the writ have the power to terminate martial law and the suspension of the privilege of the writ and in the circumstances of this case the judicial authorities do not have such power.

2. There was a rational basis for the honest judgment and determination that there was immi-

nent danger of invasion and that the suspension of the privilege of the writ and the existence of martial law should be continued and in the absence of fraud or caprice the District Court lacked power to invalidate that judgment.

3. Even if the privilege of the writ was not suspended, martial law existed and the appellee's discharge should have been refused on the merits on the ground that he was lawfully detained under martial law.

III. Apart from the suspension of the privilege of the writ and the existence of martial law generally or in other cases, the particular application of martial law here involved, trial by a military court for the offense of assault and battery on a military sentry on duty within the Pearl Harbor Navy Yard with intent to impede him in the performance of his duties in time of war was lawful and required by military necessity and the privilege of the writ was suspended in such case and even if not suspended, the writ should have been refused or discharged on the merits and the appellee should not have been discharged.

G. D. CROZIER,
United States Attorney, District of Hawaii;
EDWARD J. ENNIS,
Special Assistant to the Attorney General,
Attorneys for Appellant.

[Endorsed]: Filed May 13, 1944. Paul. P. O'Brien, Clerk.